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THE  
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THE SUBODHINI

BEING A COMMENTARY BY  
BHATTA VIS'WES'WARA

ON

The Vyawahâradhyâya of the Mitâksharâ of Śrī  
Yājñaneśwara on the Yājñavalkya Smṛti

---

AN ENGLISH TRANSLATION

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*To*

**The Right Honourable**

**V. S. SRINIVASA SASTRI P.C.**

## INTRODUCTION.

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This Volume is the Fourth in this series according to the order originally prospected, but is the 22nd in the chronological order of books published. The translation is based upon the Edition of the Text in Sanskrit published as Vol. III of this series. As this is a running commentary on the *Mitākṣharā*, which again is a commentary on the great *Smṛti* of *Srī Yājñavalkya*, the Verses in the original *Smṛti* of *Yājñavalkya* have been indicated in black types at the top of each. The references to the text of the *Mitākṣharā* and its translation have been indicated in brackets following each. The references are in accordance with the *text* and the *translation* published in this series at Nos. 1 and 2. The *text of the Mitākṣharā* has been printed in *thick black types* and the *translation* has been printed in *italics*. Thus :

*Bhasmādisamsparsane tu iti* ( R. 132. l. 20). *In cases of assaults by means of ashes &c.* (p. 353. l. 7)

Indicates that this passage is at p. 132, l. 20 of the text and p. 353 l. 7 of the translation.

As is the case with many other writers very scanty material is available to enable a detailed account of the life and career of the Author. From the opening and the closing verses of *Sobodhini* it is clear that *Bhaṭṭa Viśveśwara* was the son of *Pedi Bhaṭṭa* also otherwise known as *Appā Bhaṭṭa*, his mother's name was *Ambikā* who perhaps was also known as *Lakshmi*, the family *Gotra* was *Kauśika* and it followed the *Śākala Śākhā*.

He flourished in the reign of King *Madanapāla* of *Kāshthā*, a city in the north of Delhi and on the banks of the *Mahānadi* and the *Jamnā*. This king reigned in the 15th century of the *Vikrama* era and our Author therefore lived during that period. The *Madana Pārijāta*, another work written by him under the auspices of the same king was written in the *Vikrama* year 1430 the name of the year being *Sādhāraṇa* correspond-



ing to 1373 of the Christian era. King Madanapāla was the son of king Sahārana or Sādhārana and the grandson of king Hariśchandra, who was the son of Bhawapāla or Bharahapala and the grandson of Ratnapāla. Mādanapāl's brother was Sahajapāla and his son's name was Māndhātā.

Besides the Subodhini, Bhaṭṭa Viśveśvara wrote the following works : viz. (1) Madana Pārijāta (2) Mahādānapaddhati (3) Mahārṇava Karma-Vipāka or Karma-Vipāka and (4) Smṛtikaumudi.

(1) *The Madana Pārijāta* is an independent nibandha or digest on the Dharma-śāstra and is divided into nine stabakas or plates treating respectively of (1) Brahmacharya, (2) Gārhaṣṭhya, (3) Āhika, (4) Garbhādānādisanskāra, (5) Āśauca (6) Drawya Śuddhi (7) Śrāddha, (8) Vibhāga, and (9) Prāyaschitta. This work is regarded as of authority under the Benares School of Hindu law supplementing the Mitāksharā where necessary. Although the work is attributed to Madanapāla, it was really the handiwork of *Viśveśvara Bhaṭṭa*.

The *Mahārṇava Karmavipāka* was written during the reign of Māndhātā the son of the king Madanapāla as appears from the concluding portion of the manuscripts of the work in the Deccan College collection. The introduction contains some of the verses which are found in the *Subodhini* and *Madanapārijāta* such as मनीषेण शास्त्रे. &c. The *Smṛtikaumudi* also opens with the verse नमः सकलव्यायण &c.

The present translation is based upon the text published in the Collection of Hindu Law Texts. Of the three commentaries on the *Mitāksharā* this is the oldest and by far the best. Its author flourished about two centuries after *Vijñāneśvara* when the usages and social ideas of the time of *Vijñāneśvara* had not undergone much change. A comparison of this work with that of the voluminous commentary known as the *Balambhatti* brings out the important fact that the latter work has been largely based on the earlier brief exposition by *Bhaṭṭa Viśveśvara*. The book reveals the great learning and acumen of the writer. On points

of ambiguity and uncertainty the exposition contained in this work has been found to be of use and importance; vide L. R. 50 I. A. 32. *Bhatta Viśveśvara* is of greater authority in the Benares School, than elsewhere, on account of his work the *Madana Pārijāta* which is regarded as a very important work supplementing the *Mitākshara*, wherever it needs supplementing.

The family of the Bhaṭṭas occupies a very prominent position in the Sanskrit literature. This *Viśveśvara Bhatta* however must not be confounded with his later namesake who was also known as *Gāgā Bhatta*, and who has come to be known in Maratha history by his association with the coronation of *Shivaji* the great founder of the Maratha Empire.

In addition to the manuscripts used for determining the Sanskrit text—already published, Mr. S. S. Setlur's compilation published later on, and a manuscript in the possession of Mr. M. V. Bhat, Advocate High Court, were availed of in determining correct readings for this translation. The writer acknowledges his obligation to both these.

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# THE VĪSWEŚWARI OR SUBODHINĪ

## A COMMENTARY ON THE MITĀKṢHARĀ

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### BOOK II POSITIVE LAW. Chapter I.

#### GENERAL RULES OF PROCEDURE.

#### Bow to the prosperous Ganeśa

10

"Bow to the great God who holds the *Pināka* bow, and who is the  
Benediction. "source of all blessings; bow to the God in whom  
"Lakshmi, the Goddess of Wealth finds pleasure; bow  
"also to the (guardian) Deity of Speech" (1).

"He who is known as the talented and prosperous Bhaṭṭa Viśve- 15  
"śwara and who is the born son of Appā Bhaṭṭa writes this commen-  
"tary called *Subodhinī* (elucidating the meaning) of the work called  
"Mitākṣharā" (2).

"May this composition of the pupil of the sage who is the 20  
"foremost in the Forest of Vyāsa obtain a permanent position in the  
"minds, pure like the surface of a mirror, of those right-minded men,  
"who are few in number in this world, who possess a high and praise-  
"worthy character, whose dealings are fair, and whose appreciation of  
"the *Śāstra* has a natural attractiveness of its own." (3).

---

#### INTRODUCTORY.

25

At the end of the former Book<sup>1</sup>, while describing in details the  
'duties of kings', and by laying down there as a rule<sup>2</sup> of law that the  
guilty should be punished, and the innocent protected properly, it has  
been said that the authorities entrusted with the task of government  
should daily conduct judicial proceedings. The second Book is being com- 30  
menced with the object of answering the inquiry as to the nature, kind,  
and details of the aforesaid judicial proceedings. *Abhiśhekādiguṇa-*  
*yuktasyeti*<sup>3</sup> (*possessing the qualification of annointment &c. p. 1. 1. 2*).

---

1. i. e. *Āchārādhyāya*.

2. *Vidhi*: literally means an injunction. See note on *Hindu Law Texts*,

3. *Mit. P. I, 1. 5*.

By the injunction<sup>1</sup> of performance in the text, 'The King should attend personally to the administration of justice<sup>2</sup>,' the holding of a judicial inquiry with all its essentials has been laid down as a duty in the last Book.<sup>3</sup> Here the second Book is begun in answer to an inquiry about the essentials. The meaning is this.—The connection of the two books is that these are related as the cause and the thing possessing the cause.

### Yājñavalkya Verse 1.

Anticipating the question—'what sort is this *Vyavahāra*'? The Author explains the nature of *Vyavahāra*, commencing with the base<sup>4</sup> word in the text, *Vyavahārān* &c. *Anyavīrodheneti*<sup>5</sup> (against another &c., p. 1. 1. 15). the author expounds the same by an example. *Yathā Kaśchiditi* (As e. g., where a certain person &c.). The Kinds of *Vyavahāra* are indicated by the use of the accusative plural termination with the word *Vyavahāra* which stands in the position of the base word; so the author says *Tasyānekavidhattvamiti*<sup>6</sup> (its variety &c. p. 1. 1. 19). The author indicates the object with which the word *Nripa* is used. *Nripaṇiti* (By the word King &c. p. 1. 1. 20.). *Neti*<sup>7</sup> (Not &c. p. 1. 1. 2. 1. (The author removes the (charge of) repetition of the expression 'should attend personally to the administration of justice'. *Paśyediti*<sup>8</sup> (should administer &c. p. 1. 1. 12) *Purvoktasyānuvāda iti* (a repetition of what was said before &c., p. 1. 1. 12.) Here the text is to be construed as follows :—The clause 'the King should attend personally to the administration of justice' is to be (connected) with the clause 'in conformity with the principles of *Dharma*' presently to be described. The Author mentions the same particular *Dharma*. *Ṭīdhwadbhirveda-vyākaraṇa-dharmasāstrābhijñairiti* (Along with the learned—with those well-versed in works on legal science and the Vedas, grammar &c., p. 2. 1. 4 & 5).—i. e. the rule requiring the association of learned Brahmins. This very rule constitutes

1. See page IV, note on Hindu Law Texts.

2. Yājñavalkya *Āchārādhyāya* V. 360.

3. Lit. Chapter. The Yājñavalkya-Smṛiti has three chapters viz. *Āchāra*, *Vyavahāra* and *Prāyaschitta*.

4. *Prātipadika* is a term which occurs in every word or form. In grammar it means the crude form. अर्थवद्धानुप्रत्ययः प्रातिपदिकम्' इत्या. सू. १-२-४५. 'A significant form of a word, not being a verbal root, or an affix is called a *Prātipadika* or crude form.' Here it is used to indicate a principal or significant word.

5. Mīt. p. 1. 1. 11. 6. Mīt. p. 1. 1. 12. 7. Mīt. p. 1. 1. 12. 8. Mīt. p. 1. 1. 12. 9. Mīt. Eng. p. 11. 8. 10. Mīt. p. 1. 1. 14. 11. Mīt. p. 1. 1. 15.

the details *i. e.*, the mode of attending to the details (*of vyawahāra*)  
Thus it is plain that the whole of the remaining portion of this Book is  
an elaboration of the first verse of this second Book.

It may be said that the pre-minance of the Brāhmanas and the  
king is equal in the matter of the decision of suits, so the author  
removes this doubt by Brāhmaṇaiḥ Saheti<sup>1</sup> (*by the expression*  
*'with Brāhmanas'* p. 2. 1. 7). Teṣhām (1, 16) (Their) *i. e.* of the  
Brāhmanas.

It may be asked how can the absence of equality be inferred from  
the use of the instrumental? So the Author says:

\* PAGE 2. Saha yukte apradhāne iti<sup>2</sup> (*conjunctive use with saha*  
*indicates subordination &c.* p. 2. 1. 10). The meaning  
of this is as follows:—When used with the preposition, *saha* (*with*)  
the Instrumental case indicates subordination. As in the expression  
'the father has come along *with* the son' and similar expressions; so  
here also by the use of the expression 'along with Brāhmanas, the sub-  
ordination *i. e.* the dependence of the Brāhmanas follows from the use of  
the Instrumental case with (the conjunctive particle) *saha*.

The Author mentions the result of regarding the King as the princi-  
pal and the Brāhmanas as accessories. Ataschādarśana iti (1. 16) (*hence in*  
*the case of absence of a decision &c.* p. 2. 1. 11). The import is this; the  
blame of the King is greater as he is the principal. Of the Brāhmanas,  
however, so much blame does not exist. Not, be it marked, an absolute  
absence of blame, for in that case there would be a conflict with the  
text "Either the Court must not be entered or the truth must be  
spoken; a man who either speaks nothing or speaks falsely becomes  
sinful (guilty.)"<sup>3</sup>

### Yājñavalkya Verse 2.

The Councillors chosen should be (in addition to and) different  
from the Brāhmanas spoken of before; so the Author says, Kincheti.  
(*further &c.*, p. 3. 1. 3). Even the said councillors should be Brāh-  
manas only; so the author says Yād'yapiti<sup>4</sup> (*although &c.* p. 3. 1. 14.)  
Sa tu Sahbyairiti. (*Moreover he accompanied by the Councillors &c.*  
p. 3. 1. 15.) He (sa) *i. e.* the King Sahbyaiḥ (*by the Councillors*)  
Sthiraiḥ (*steady,*) unmoved. Prājñaiḥ (*Special Scholars*) possessing  
intelligence. Maulaiḥ (*of high parentage* p. 3. 1. 16.) descended  
through father, grand-father.<sup>4</sup> Arthasāstraṃ (*Science of polity*) the  
works of Uśanas and others.

1. *i. e.* a long ancestry 2 Mit p 1. 1. 15 3 P 1. 1. 16.

4. Manu. Chap. VIII, 1. 2. 5. Mit. p. 2. 1.

Te cha traya iti (*those moreover should be three &c.* p. 3. 1. 18.)  
They (te) *i. e.* the Councillors. The Author mentions a different view:  
Bṛhaspatistu iti (*Bṛhaspati, however &c.* p. 3. 1. 21.)

It may be urged, the rule requiring the qualification of 'accomplishment by learning and study,' may be taken to have a reference to the 'learned Brāhmaṇas' spoken of in the text, "A King should administer justice &c", so that, by virtue of the qualification of accomplishment by learning and study and the like, these Councillors are not different from those learned Brāhmaṇas spoken of before. Anticipating this contention, the Author meets it by Na cha Brāhmaṇaṇaḥ sahet-  
tyādi [*It should not, however, be supposed that the words 'with Brāhmaṇas' &c., p. 3. 1. 25.*]

It cannot be said that those very Brāhmaṇas are referred to as Councillors, inasmuch as Kātyāyana has distinctly differentiated the Brāhmaṇas mentioned before' from the Councillors. Therefore as there would be a conflict with this text (of Kātyāyana), and, moreover as there is the absence of the relation of an adjective and the noun qualified (by it), the meaning is that the rule regarding the investiture as Councillors (in verse 2) cannot be said to have been made with reference to these (*i. e.* the Brāhmaṇas). Saprādvivāka iti (*with the help of the Chief Judge &c.* p. 3. 1. 34.) Prādvivākaḥ is a representative of the King. Amātyāḥ (*Ministers*) *i. e.* advisory ministers.

The Author mentions different classes of Brāhmaṇas on the principle of their being not (required to be) appointed. Brāhmaṇāpyn-  
niyuktā ityādinā (*Brāhmaṇas also being not appointed &c.*) Here the person having the authority to appoint is the King. By him appointed and not appointed. This is the meaning. The meaning is that even they become co-sharers with him in it.

The Author explains the meaning that arises from the words in the original text :—Ripau mitre cheti (*to friend and foes &c., p. 3. 1. 2*). Chaśabdādīti (*by the word cha &c.*)

### Yājñavalkya Verse 3.

The holding of judicial proceedings every day has been laid down as a duty for a King. So also has been laid down the performance of propitiatory ceremonies for the removal of calamities. It may, therefore, be asked what should be done if by chance the two (duties) come

into conflict? The answer is, that a Brāhmaṇa, or in his absence a Vaiśya possessing the qualities of self-restraint and being other than the Councillors should be appointed to investigate judicial proceedings. So the author says by Vyavahārānṛipah paśyedyuktam Ityādīnā &c. (It has been said that the king should decide disputes) The author wishes to indicate that the course given by the revered sage Vājñavalkya as an alternative has been regarded as a principal one by Nārada, so he says Nāradena twayameveti. (This very thing, however, by Nārada &c.). The meaning is that, as kings have no time on account of their manifold engagements, it is proper that investigation of judicial proceedings should daily be caused to be made through another person of the afore-said description and acting as his proxy; therefore this is the principal course (and not an alternative). From the introductory words Dharma-śāstram puraskṛitya (placing before him Dharma śāstram), it appears to be implied that the person appointed by the King has alone authority to investigate cases.

Prādvivākamate Sthitah iti (adhering to the opinion of the Chief Judge &c. p. 4, 1. 37.) The meaning is that the Chief Judge appointed according to Dharm-Śāstra should be induced to go by means of persuasion &c. and not under any restraint or control.

He who asks, sifts or discriminates; so this name Prādvivāka (Chief Judge) has an etymological, and not—as in the case of Aśvakarṇa—a current meaning. Wishing to indicate this, the author says: Tasya Cheyam Yaugikīti (This, however, is its etymological &c. p. 5. 1. 3) Prichchatīti Prāt (He who questions is a Prāt &c. p. 5. 1. 3). The Quib (क्विप्) ending has been obtained under the rule in the vārtikā (वार्तिक) quib vachi-prachchi &c. according to which the vowel becomes long and there is no (संस्वाराज) sampra-sārana.<sup>2</sup> Vivinakti (discriminates) considers. Discriminates or sifts, means expounds in detail.

1. The following is the full text of the Vārtikā विस्मयित्वापगतस्तुद्वयप्रभाषा दीर्घोऽस्मिन्नात्र च' (see *Sindhūnta Kaumudi* on अन्त्येभ्योऽपि इत्यने 5-2-178 is *Kṛīḍānta* affixes.) which when translated would read thus "The vowels in the roots वच् वच्च् आदस्तु ऋट्, लु and श्री become long when the द्वि termination is affixed, and no Samprasāraṇa takes place" द्वि is a termination which when affixed to a root, nothing remains of the termination and the root is modified into its crude form.

2. The Samprasāraṇa (संस्वाराज) is a change of the semi-vowels व् वृ and लृ into र् वृ and लृ respect ve y. (See *Pāṇini* I 1. 45 'इत्यत्र संस्वाराणम्') It is properly the name of the vowel which has replaced the semi vowel. Thus the past participle of स्वप् 'to sleep' is formed by adding क्त to स्वप् I 1. 15 'कन्तवद् निद्रा' i. e. स्वप्+त. But under VI-1-15 'अधिसृज्यजादीनां किति' there is a Samprasāraṇa before the द्वि affixes and so we have स्वप्, i. e. the व् in the root is replaced by र्

The term, however, is also employed to designate the process under which the change takes place, as in वृत्ताम् (द्विणि कामो यस्य च) VI. 1. 131.

\* PAGE 3.

## Yājñavalkya Verse 4.

Councillors acting against the provisions of *Dharma-Śāstra* through feelings of passion, malice &c. should each be separately punished with a fine double in amount which would accrue as damages for a defeat in the suit, excepting in the cases of ignorance, misapprehension &c. This the author indicates by *Api cha rāgādityādīnā*<sup>1</sup> (Moreover if out of passion p. 5. 1. 18.) *Sabhyāḥ* (Councillors 1. 16.) is a term for 'the appointed.' Hence it is that a lighter punishment should be understood for the unappointed in comparison with (that prescribed for) the appointed. Of the appointed the guilt becomes aggravated by their acting against the provisions of *Dharma-Śāstra*, inasmuch as they were specially commissioned (to follow these provisions). Of the unappointed, however, the guilt is smaller, on account of the absence of the special commission. And this is quite proper. Moreover, in the case of the appointed there is an infraction of the dictates of *Smṛtis*, and also a disobedience of the King's command, while in the case of the unappointed the infraction of the *Smṛtis* only.

*Aṣṭā-chatvāriṇṣat-sanskārairiti*<sup>2</sup>—(by the 48 purificatory ceremonies &c. p. 6. 1. 5.) These *Sanskāras* or sacraments or purificatory ceremonies have been enumerated by Gautama as follows:—(1) The *Garbhādhāna* (or ceremony before conception.) (2) The *Pāmsavana* (ceremony to secure the birth of a male child). (3) The *Simantonnayana* (or the parting of the pregnant wife's hair). (4) The *Jalakarma* (or the ceremony at the birth of a child). (5) The *Nāma karaṇa* (the ceremony of naming the child). (6) The *Nishkramaṇa* (or the ceremony of taking the child out of the house for the first time). (7) The *Anna-prāśana* (the ceremony of feeding the child with food, cooked rice &c.). (8 & 9) The two ceremonies of *Chaula* (tonsure) and *Upanayana* (initiation), (10–13) The four vows for the study of the Vedas. (14) The *Snānam* (or the bath, on completion of the studentship), (15) The (sacred) union with the wife, as a companion for the performance of religious duties. (20) The performance of five sacrifices *i. e.* to gods, manes, men, spirits and Brāhmins. The meaning is that the performance of the five sacrifices is intended in connection with these in the ceremonies mentioned above, as also in connection with sacrifices to gods.

The seven kinds of *pākasansthās* (ordinary or domestic sacrifices) viz. (1) The *Aṣṭakā* (2) the *Pārvaṇa* and (3) the ordinary

1. Mīt. p. 3. 1. 13.

2. Mīt. p. 3. 1. 20.



Śrāddhas (4) the *S'rđvaṇi* and (5) the *Āgrahāyaṇi*, (6) the *Chaitri* and (7) the *Āivayujī*.

The seven kinds of *Haviryajña-Sansthās* (or sacrifices requiring oblation of food &c.) viz. (1) the *Agnīśādhya* (2) the *Agnihotra* (3) the two *Darśa* and *Paurṇamāsa*, (4) the *Chāturmāsya*s, (5) the *Agrajana* sacrifice (6) the *Nirūḍha Paśubandha*, and (7) the *Sautrāmanī*.

The seven kinds of *Soma-Sansthās* (or the *Soma* sacrifices) viz; the *Agniṣṭoma*, the *Atyagniṣṭoma*, the *Ukthaḥ*, the *Shodait*, the *Vājapeya*, the *Ātirātra*, and the *Aptoryama*. These are the forty purificatory ceremonies or sacraments.

A *Sanskāra* is of two kinds. The *Brāhma* and the *Daiva*. Those beginning with the *Garbhādhāna* and ending with the *Snāna* constitute what are called *Brāhma*, while the *Pākayajñas* (the domestic sacrifices) *Haviryajña* (the sacrifices of the burnt offering), and the *Somayajñas* (the *Soma* sacrifices) are called *Daiva*. The sacramentary character of the domestic sacrifice and others will be seen from the following text of Śāṅkha and Likhita: "The ceremonies called *Sanskāras* or sacrifices are those known as the *Pākayajñas*, the *Haviryajñas*, and the *Soma* sacrifices, and ending with the *Agnihotra*. A *Brāhmaṇa*, who offers the *Agnihotra* (the daily offering to the perpetual fire) is purified by the initial sacraments and further purified by the later sacraments, and becomes constantly possessed of the eight (prime) virtues (of life) deserves to be in the region of the *Brahman*, attains to the level of the *Brahman* and does not ever fall from it." *Brāhma-laughikah* (belongs to the region of the *Brahman*) i. e. deserves to be in the region of the *Brahmā*. Moreover the eight prime virtues are love for all creatures, forbearance, freedom from jealousy, purity, quietism, auspiciousness, freedom from miserliness and freedom from covetousness.<sup>1</sup> These are the 48 Sacraments.

### Yājñavalkya Verse 5.

A *vyavahāra* is an allegation before the King and the like, by way of a complaint against the defendant. The Author indicates by *Vyawahāra-vishayamāha* &c (subject-matter of *Vyawahāra* indicated) that *Vyawahāra* is the subject matter of what is being alleged. *Āvêdayati* Ched *rājā* &c. (if informs the King &c. p. 6. l. 11 & 12): here the word *rājā* (king) indicates by implication *Śrenis* and others<sup>1</sup>.

1. See Yājñ Verse 30 (para 24 ante l. 15-46 sk.) Nārada l. 7.

The author indicates the two-fold character of the subject-matter of a suit (*Vyavahāra*) by *sa cha dwividhaḥ* (that moreover is twofold 1. 32. Mit. Eng. p. 6. 1. 23). The derivation is thus indicated, the subject wherein the accusation is in the form of a doubt, or in the form of the statement of a fact. *Hodhā Loptramiti* (*Hodhā, goods stolen* &c. 1. 28.) That which is concealed is *loptra i. e.* stolen wealth. "*Chaurikā, Stainya, Chaurya* and *Steya* are words indicating theft; while *loptra* means the wealth secured thereby." Vide *Amara*.<sup>1</sup> *Etānyapi Sādhyā-bhedeneti*<sup>2</sup> (*Even these by the varieties of the points at issue* &c. Mit. p. 7. 1. 13.) that is to say, by a different point at issue.

*Na cha prāpitamanyeneti*<sup>3</sup> [*and (hush up) one brought by another* Mit. P. 7. 1. 21] should not admit one brought unjustifiably by another. Or he should not hush up Mit. P. 7. 1. 20. *Na grasṭa i. e.* should not neglect or disregard an action brought *i. e.* instituted by another. 'Nor should he hush up one brought by another' is also another reading. There the meaning is this: He should not accept or admit anything which has somehow or other become known to him, or through passion, and which has not been set up or alleged by any one of the contending parties or their relatives.

The Instrumental plural in the word *Para* in the original text (of Yājñavalkya) has no (special) purpose\* and hence, a suit is allowable between one man, and one, two or many men. So the Author says *Paralrititi* (*By others* etc. etc.)

*Tadbhinnasādhyavishayamiti*<sup>4</sup> (*refers to suits having different causes of action* &c., p. 7. 1. 26.) The purport is that different causes of action, should be investigated in separate suits. This is what is intended to be said: When one man is sued by another, with the allegation 'he owes me a debt,' then in the suit which follows, one who is (already) sued by another should not be allowed to be sued. Thus it is that a dispute between one and many is prohibited and not in a suit where the allegation is "these owe a hundred (coins) to me," can it be said that a dispute between one and many is prohibited. *Ityādi Arthasiddhamiti*<sup>5</sup> (*being evident from the context* &c. 'p. 7. 1. 32). The statement itself is impossible in the case of one who is not duly trained as it is not possible to approach the Royal presence in an impudent manner; moreover, if after the first complaint being according to the requirements of law, no summons is issued to the defendant, then the

1. The lexicon called *Amarakośa*, 2-10-25.

2. Mit. p. 4. 1. 6. 3. Mit. p. 4. 1. 9.

4. Cf. I. 2-28. 'जात्यादयोऽपि विदुः शब्दवचनसंज्ञायां' *i. e.* In words expressive of a class, the plural is optionally employed to denote the singular number.

5. Mit. p. 4. 1. 12. 6. Mit. p. 4. 1. 14. 7. Mit. p. 4. 1. 15

complaint itself is useless and (in such a case) no one should file a complaint; and moreover, the task of governing the subject would not be accomplished. For all these reasons, it is to be understood, that the duties laid down before are evident in themselves.

Kīm Kāryaṃ kâ cha te pīdeti<sup>1</sup> (*what is your suit for, and what your grievance &c.*, p. 8. l. 1.) refers to different causes of action viz. occasioned by any act referring to property, or by an injury caused through anger. Akalpetyādī. (those that are *exempted &c.*, p. 7. l. 31) Akalpaḥ (exempted l. 31) diseased, Viṣhamasthaḥ (*one in difficulty* 8. l. 9) one who is in (actual) difficulty. and Kriyākūlaḥ (*one engaged in religious duties* l. 10) engrossed in the performance of ordinary and special rites. He whose business would suffer greatly by attending (the court) is a Kāryâtīpātī (*who would suffer great loss.* &c. l. 11.) One afflicted by the pain of separation from a relation or a friend is a Vyasaṇī (*a person afflicted with pain* p. 8. l. 11.) Intoxicated (Mattaḥ l. 13.) by any intoxicating substance. Unmattaḥ (*possessed*) by evil spirits and the like. Always devoid of comprehension is a Pramatta (*an idiot or insane*). Ārtaḥ (*aggrieved* l. 14.) by adversity &c. Hīnapakṣhām (*a helpless woman* l. 14) i. e. one without a protector i. e. deplorable by all people.

To the exceptions regarding summonses in the case of women, the Author mentions a counter-exception: Tadadhīnakūṣumbhinyāḥ itī (*women upon whom their families are dependent &c.* l. 18.)

A summons for one afflicted with a disease has been prohibited above. Even there, (the Author) mentions a counter-exception: Kālam deśan cha Vijnāyati (*Taking into consideration the time and the place* l. 20).

Sthānāśedha itī (*confinement to a place &c.* l. 30). 'You should not go from such (and such) a place' is Sthānāśedha 'confinement to a place'. 'You should not go until evening' is Kālāśedha 'arrest for a limited time'. 'You should not go to a village' is Pravāsāśedhaḥ (a restriction regarding travelling. l. 31). 'Such (and such) an act should not be done' is (Karmāśedhaḥ) 'a prohibition from a specific act.' This is the distinction. Anyathā Kurvannāśedhetī (*one who, in causing an arrest, acts improperly* l. 34-35) e. g. by making an arrest at a time when an arrest ought not to be made. Nirveṣṭyukāma itī. (*one about to marry* p. 9 l. 3) i. e. one wishing to enter into another order<sup>2</sup> in life i. e. intent on marriage.

1 Mit. p. 4. l. 15.

2. Transition from any of the four orders viz. गृहस्थ, व्रतित, व्रतित and गृह into another.

## Yājñavalkya Verse 6.

- <sup>1</sup> Hinaḥ panchavidhaḥ smṛtaḥ iti (these are the five varieties of a faulty (Hina) litigant p. 9. ll. 31-32). i. e. on account of the text. This is to be inferred. Or the word iti (etc.) is (used as) indicative of a reason so that the meaning would be 'for the reason &c.'

The Author now introduces an explanation by way of an answer to a possible objection which may be raised to the procedure now laid down in this verse having regard to what has been said before<sup>2</sup>:  
 10 Āvedanakāle eveti (at the time of the first complaint &c, p. 9 ll. 33-34) Tithi-wāradineti (date, day &c. 1. 37). Tithiḥ (date) i. e. the first &c. Dinam<sup>3</sup> (day) i. e. daytime. Kṣhamālingādineti (reason for forbearance and the like &c. p. 10. l. 1). Not resorting to an arrest or the like in regard to the defendant is Kṣhamā (forbearance) i. e. tolerance. The reason or cause for the same, such as infancy, idiocy and the like.

15 Arthavaddharmasamyuktamityādi (which contains the Artha, which is in accordance with the law &c. p. 10 ll 4-5) Arthawati i. e. which sets out the cause of action. Dharmasamyuktaṁ-Dharmah significance; i. e. in concise or diffused language or the like; containing (Samyuktaṁ) that. Sampūrṇam complete i. e. not dependent on any inference<sup>4</sup>  
 20 Anūkūlam (devoid of confusion l. 6) couched in clear language.<sup>5</sup> Sādhya-wati (which contains the point at issue p. 10 l. 3) i. e. together with the fact intended to be established. Wāchakapadam (which is couched in significant language l. 7) which is devoid of words conveying an inferior or secondary sense. Prakṛtārthānubandhi (consistent with the claim made out l. 7) i. e. not contradictory to the complaint first laid. Prasiddham  
 25 (intelligible l. 8) i. e. relates to things well known in the world. Aviruddham (not inconsistent l. 8) i. e. not opposed to the usage of the town or the nation, nor to what is said before or after, nor to direct means of proof or the like, nor also to the rules of judicature. Niśchitaṁ (certain l. 8.) i. e. devoid of any doubt as to an alternative meaning. Sādhanakṣhamam (capable of proof l. 8). i. e. deserving to be proved. Saṅkṣiptam (concise) i. e. not very much diffused  
 30 Nikhilārtham (bringing out the whole cause of action l. 9.) i. e.

1. From here commences the commentary on verse 6. The print indicates this clause as the last in verse 5. That is a mistake. Read this as the beginning of verse 6.
2. i. e. at the time of the first complaint.
3. i. e. as distinguished from night.
4. i. e. not open to any inferential construction.
5. अद्वितीयं lit-not dubious.

which has left out nothing required to be said. Deśakātvirodhi  
(not impossible in regard to place or time l. 9). e. g.

\* PAGE 5 'he has deprived me of a mid-land area field, or a  
thousand of mango fruit (harvested) in the autumnal  
season, and the like. Ahaṇ (the day l. 10) e. g. the first date and  
the like, or the day time. Velā (the time) e. g. the morning or  
the like. Deśaṇ (the country l. 11). e. g. the central region and  
the like. Pradeśaṇ (particular district l. 11) i. e. the particular spot  
in the field or the like. Sthānam (the place) e. g. Vārānaśi or the like.  
Āvasathaṇ i. e. (the village) &c. or a particular spot such as a market  
place or the like. Sādhyākhyā (the point at issue l. 12). i. e. the  
name of the thing which is the subject of dispute. Jātīḥ (caste) such as  
Brāhmana and the like. Ākāraṇ (personal description) e. g. particular  
colour of a cow or an ox and the like, as also the particular location  
(in the case) of a house, field etc. Sādhyapramāṇasankhyāwat (Con-  
taining the measure and quantity of the matter in issue l. 13). Sādhyā  
pramāṇam, the boundaries of a field and the like. Sankhyā quantity  
i. e. of rupees or the like. Ātmapratyarthīnāmavāt (containing the  
name of (plaintiff) himself and the defendant l. 14). This is clear.  
Parātmapūrva-jānekarājanāmabhirakṣitam (marked with the names of  
the ancestors of himself and of the defendant respectively as also with the  
names of Kings ll. 15-16), Paraṇ i. e. the defendant. Ātmā the plaintiff.  
Pūrva-jāṇ (ancestors), the father &c. of these. Anekarājānaḥ (several  
kings) i. e. during the period of possession; of these the names  
(nāmāni) Talāchlinhitaṁ-marked by these. Kṣhamālingātmapidāvat  
(which contains the cause of forbearance and the injury done to self  
ll. 16-17). The causes of forbearance have been explained.<sup>1</sup> Āhartā  
(grantee l. 18) i. e. the acquirer by gift &c. Dāyako (grantor) i. e. the  
donor. The clause where the grantee and the grantor have been  
mentioned-or Kathitāhartīdāyakaṁiti may also mean-where the re-  
lationship of the plaintiff and the defendant is set out. Kṛṣṇa-bhūmaḥ<sup>2</sup>  
Paṇḍubhūma iti. (blackfield, whitefield &c. p 11 l. 9) these two words  
have an अ ending, vide the following text of the Author of the Vārtikas  
(on Sūtra V-4-75) viz "The affix अच् (Ach) comes after the word  
भूमे preceded by the words कृष्ण, उद्भू, वातु, and also after the words  
गोदावरी and नदी when preceded by a numeral."

As an impossible complaint is regarded as a vicious plaint, as, un-  
der the rule that 'a plaint containing a mixture of several causes of

1. Above, such as infancy idiotcy &c.

2. This is the reading in Subodhini and Dīpambhatti also.

action shall not be allowed' it may be asserted that a plaint of such a kind may be regarded as vicious, so the Author argues with a view to refute such a suggestion : Yattuanekapadeti (*that...several causes of action* &c p. 12 ll. 5-6). That complaint i. e. the plaint which is mixed up of several causes of action shall not be permitted. Ābhāseti (vicious &c. p. 12 l. 10) is what is contained in the mental reasoning. There anticipating the question whether the term Pada (cause) having regard to its derivation as that which is inferred or known—is used as indicative of the subject in dispute or as a cause of action such as the recovery of debts or the like, the author indicates that there would be no vice in the first case and so says, Tatra yadyaneketi (*there if several etc.*); or it may be the second alternative : anticipating this, the author says Rnādāneti (*recovery of debt etc.* l. 11). Now the author expounds the meaning which is intended of the rule "when several counts are mixed together etc." Kintu Kriyābhedāditi (*only on account of difference in the causes of action* &c. l. 15). The author confirms the same sense under cover of a summing up thus : Tasmādaneketi (*therefore as several counts etc.* l. 20). Tasyārthaḥ (*meaning of it* l. 19) i. e. of the rule. With a view to expound the term 'plaintiff' in the expression 'as alleged by the plaintiff,' the author proceeds Arthigrahaṇāditi (*by the term Arthi* &c l. 21). The son of the plaintiff is also a plaintiff, even so his father. By the term *Adi etc.* is intended to mean that persons appointed by the plaintiff are also (regarded as) plaintiffs. Here, it is proper that the sons etc of the plaintiff should be regarded as plaintiff; but the question may arise how can those appointed by the plaintiff be regarded like himself, so the author says Niyuktasyāpiti —(*even of the one appointed* &c. l. 22.)

### 30 Yājñavalkya Verse 7.

<sup>2</sup>Aśiṣṭavibhaktisamāseti (*cases and compounds difficult to 'split up* p. 13 l. 35) Śiṣṭam (means) connected, appropriated i. e. not faulty. Aśiṣṭam means faulty. Case and compound (put together make up the compound expression) cases and compounds. Faulty cases and compounds. That which exists 'with an implication is (an expression) with an implication.' That expression which owing to the (use of) 'cases and compounds, difficult to split up' as also which is with an implication;

1. In Yājñavalkya Verse 6 second quarter.

2. The Mīlākshara reading is *Duṣkṛta* यद्वय.

such a one—the like of it. By the use of such; Thus is the compound to be solved. *Pratyawaskandanamiti* (confession and avoidance p. 14. ll 1-2) i. e. an answer with a plea *Pratipattiḥ udāhṛtā*. *Pratipattiḥ* (Mit. Text p. 7 ll. 7) means admission. i. e. by pleading the truth (of the plaint), does not have a different meaning. *Āchāreṇāvasannopitī* (though defeated by customary procedure p. 14. l. 24) i. e. defeated by a judicial trial.

'The answer of the defendant, who has heard the plaint, should be taken down in writing'. It may be argued

\* PAGE 6. that in this expression the word answer being in the singular number, a mixed answer would be no answer, so the Author says *Uttaramityekavachananirdeśāditi* (By using the word answer in the singular number &c. p. 1. l. 1) *Evaṃ Chatuṣṣankarepitī* (So in the case of a combination of four pleas etc. p. 16 l. 30) e. g. where it is alleged 'he took gold, a hundred rupees, clothes and also corn', a combination of pleas in answer viz. 'I owe him gold, the hundred rupees were not taken, clothes were received as a gift, and in the case of corn, he has been defeated before' may take place in the respective order. *Atonyathā Sankīrṇaḥ bhavatīti* (any other (answer) becomes (otherwise i. e. it becomes a mixed answer &c. p. 17 l. 9) That which does not serve as an answer to the most important point, but relates equally to [ all ], as also the answer which is conducive of proof of either [ allegations ] in such a case, is different from those mentioned before; i. e. any other variety is a mixed plea; thus by supplying the ellipsis the other variety itself has been mentioned.

Is a mixed plea then no answer at all? Anticipating such a question, the author says the answers cannot be simultaneously admitted but in the order in which the plaintiff and the defendant, as also the Assessors may desire, and reminds what has in substance been stated before. *Aichhikakramaḥ* (the order depends upon choice p. 17. l. 11-12) the meaning is that the order would be according as desired.

*Tasminnevābhiyoga itī* (in the same suit &c l. 20). i. e. where it was alleged as before 'he borrowed a gold, a hundred rupees, and also clothes'. Here in an answer 'I received gold and also a hundred rupees, but have not received clothes' there is a combination of the pleas of truth and falsehood or 'have returned' is a combination of truth and special plea. 'In regard to clothes, he has been defeated before' is a combination of truth and *res judicata*. This is the distinction.

1 In *Mitāksharā* p 16 ll. 16-24 an instance of a combination of three pleas in answer. *Viśveśvarabhaṭṭa* gives an instance of four pleas in expansion of that indicated in the *Mitāksharā*

It has been laid down that where in a mixed answer the points are of equal importance the order is optional ; but that where they are unequal, the trial shall be first in regard to the more important one. The Author mentions an exception to the rule giving first preference to the important point. *Sampratipatterbhūrivīṣhayatvepiti* [although the admission is the most important point &c. p. 17 ll. 24-25.] It may be argued then that in that case a mixed plea in answer could never be put up simultaneously, so the Author says no ; and so he proceeds to remove the doubt by *yatra tu mithyākāraṇottarayohrityādī* (where however, the denial and the special plea &c. p. 17. ll. 26-27) *Tasya śuddhamithyāvīṣhayatvāditi* [it applies to a pure denial etc. .l. 40]. *Prasiddhākāraṇottara iti* [the wellknown plea of special exception etc. p. 18 l. 5] such as ' True, it was received, but it was returned ' [p. 16. ll. 7-8] Another would be " this is false even before; the time mentioned<sup>1</sup> &c. as has been shown before ( Mī. p. 17. l. 30.)

### Another Objection.

It may be said : that becomes ( a proper ) answer which refutes the allegations in the plaint. In the case, therefore, of an answer by admission, there would be no answer at all, as then such (a refutation) does not occur: Anticipating such a position, the Author says *Sampratipatterapiti* [Likewise the plea of admission &c p. 18 l. 20] the Author sums up the proposition that a mixed plea cannot be simultaneously set up as an answer—*Na kwachiditi* [should not be allowed p. l. 29.] *Pratyākālitasyeti* ( by ascertaining &c. p. 20 l. 22 ) i. e. ascertaining by repeated questions.

Thus end the General Rules of Procedure.

### Special Rules of procedure.

#### Yājñavalkya Verse 9

It may be argued that by prohibiting<sup>2</sup> a counter-claim by one who has been complained against, a special plea in an answer, such as " (it) was received but was returned " would be inadmissible, so the Author says *Yadyapiti* (Although etc. p. 21 l. 14.) One who has been complained against may even set up a counter plea refuting the com-

1. Here there is a mistake in the print. Instead of यत्रादिकं कालं read यत्रादिकं कालं (Mī. text p. 8 l. 28). also see B3lambhatti p. 15. l. 5.

2. Vide Yājñ. II. 9. 11.



plaint against him. Otherwise it would render inadmissible the four-fold nature of an answer as laid down in the text: "An answer is four-fold viz. by pleading the truth or the falsehood (of the plaint), or by setting up a special plea, or a decision in a former judicial proceeding." *Ayam niśhedha iti* (this prohibition etc. p. 21 l. 16) i.e. that contained in the text "no counterclaim should be allowed against him."

*Ekasminnapi pade iti* (even though in the same suit etc. p. 22 l. 11) The meaning is that even in one suit e.g. for the recovery of a debt or the like another cause of action is prohibited.

The Author expounds it by an example *Yathāneneti\** (e.g. he &c. p. 22 l. 13). Having set up at the first complaint a false (allegation of an) advance of a hundred rupees, in the presence of the Defendant, at the time of the defence the advance at interest of a hundred clothes is alleged; although in such a case there is only one cause of action viz the recovery of a debt, still the setting up of hundred clothes in the place of a hundred of Rupees is a change in the subject-matter, and it is this that is prohibited. *Yathāveditamarthinetyanenetyarthah* (By the text 'whatever is alleged by the plaintiff' is meant &c. (p. 22 ll. 6-7). *Yathā sati padāntarāgamanepiti*—(In that case, even if there be no change in the suit itself etc. p. 22 ll. 15-16) i. e. even if there be no resort to another cause of action. In this part, the term *pada* should be understood as expressing subject-matter. *Yathā rūpakaśatam Vṛdhyā gṛhitwāyamiti*—(As e. g. ....having taken a hundred rupees at interest, he &c. l. 21). Having alleged at the time of the first complaint the loan at interest of a hundred rupees, at the time of the sworn complaint, an allegation of a forcible deprivation of a hundred rupees is made, although the subject matter i. e. the rupees be the same, there being a difference in the causes of action viz: advance of a debt at interest and forcible deprivation, a change in the subject is made, and it is this that is prohibited by the text "nor what has already been alleged should be allowed to be changed."

What has been said *Heenawādi dandya eva na prakṛtārthādhiyate* *iti*.—(a prevaricating litigant becomes amenable to punishment, but he does not lose his suit etc. ll. 30-31)—has application to what has been said above; so the author says *Etachchārthavyawahāra iti* (this, however should be observed in suits relating to property p. 23 ll 5-6.) *Manyukṛtāiti*

1. Of Kātyāyana, see Mit p 14 ll 3-5

2. Yājñ. II. 9. last quarter

&c. (*In...acts of violence &c.* l. 7.) i. e. in complaints about abuse, assault, or the like. This is the purport. By a verbal trickery of the above kind, a party loses his suit and also becomes amenable to punishment. Na manyukṛteṣhwitīlī (*not those originating in anger etc.* l. 12)  
 5 that is to say which are not the result of anger.

### Yājñavalkya Verse 10.

When a countercharge is possible, it is only in charges of felonious offences and the like, that even though himself be complained against,  
 10 one should file a countercharge against the opponent, but not when it is not so, so the Author says<sup>1</sup>, Abhiyogamanistiryetyādī (*until the complaint is disposed of etc.* l. 26.) Indeed in such a place a doubt may arise, would a countercharge be proper by an answer, or by a separate sworn complaint? and the answer is, it would not be proper by an answer, for  
 15 it would not be a proper answer, as it would not destroy the allegation in the plaint; nor even by a separate sworn complaint, the first sworn complaint would be one thing, and the countercharge would be (quite) a different thing. Therefore, as in the case of a mixed plea, a simultaneity of trial being inadmissible, it would not be a good answer, similarly also  
 20 in the case of a separate complaint, a simultaneity of a trial being equally impossible, there would be no sworn complaint and the procedure of a counter-charge itself would be meaningless, so the author says :  
 Nanuatrāpīlī (*Indeed even in such a case &c.* p. 24 l. 6.)

25 Kāryayogyastu wādinahī lī (*of the plaintiff competent for the cause &c.* p. 25 l. 8) By the term plaintiff includes both the plaintiff and the defendant.

### Yājñavalkya Verse 11.

30 2The author extends the rule stated before to other cases also Prāṇ-nyāye pratywaskandane chedameva lī (*this same . . . to res judicata and confession and avoidance &c.* p. 25 ll 27-28). The method of application is thus: In a plea of *res judicata* viz. he has been defeated in this matter before, or in a special plea viz. it was received but was returned, the party  
 35 setting up the plea is unable to substantiate it, and so that party himself becomes guilty as a false plaintiff. In such a case when the plea

1. Yājñ. II. 9. First quarter.

2. From here begins the commentary on the Mitākṣharā on the 11 verse.

of *res judicata* and a defeat, or of a return is established by the party setting it up, the plaintiff shall pay to the King a fine only equal to the subject matter of the suit. If, however, the defendant does not establish *res judicata* or a return, then in such a case, he being in the position of a plaintiff, shall pay a fine double the amount at stake, and to the plaintiff the amount in dispute. *Sampratipratyuttare tu dandābhāva iti* (p. 12. 11. 8-9) *In an answer of admission, however, there is no fine &c.* (p. 25 l. 33). When there is no concealment &c., there would be no fine, *Adhanavyawahāreṣhwiti*<sup>1</sup> (p. 12 p. 10) *In suits where the subject matter is other than money &c.* (p.p. 26 l. 10) i. e. since in cases of abuse, assault and the like, payment of a fine equal to the amount at stake, or its double is not possible. 5

It may be said that the penalty mentioned before having an application only to the Recovery of Debts, its repetition again in the rule<sup>2</sup> viz. 'the debtor should be made to pay by the King' is improper. Anticipating this objection the Author removes it: *Rājñādhamarṇika iti* (p. 12. l. 10.) *The debtor—by the King &c.* (p. 26. l. 3). It has been said before that the rule<sup>3</sup> viz. 'when upon a denial a claim is proved he should pay' applies only to the recovery of debts. Now the author propounds its applicability to all kinds of suits by *Etadeva sarvavyawahāra-viṣhayatvena ityādinā* (p. 12. l. 11) *The same rule ..... as having a reference to all kinds of suits &c.* (p. 26. l. 6). *Pratipadoktameva* (p. 12. l. 13) *As specified in each kind of suit* (p. 26. l. 9.) he should pay the amount as penalty. This is the construction. 10

Anticipating an inquiry whence is the restrictive rule, viz: specified in each suit, deduced? the author says *Chasābdo* 25  
\* PAGE 8 *vadhāraṇe iti* (p. 12 l. 13). *The word cha is used to restrict the extent* (l. 10) i. e. the word *cha* in the original text.<sup>4</sup> *Ityanuvāda iti* (p. 12 l. 13) *Is the repetition &c.* (p. 26 l. 1. 12). Repetition because of its mention here in due course, although a punishment has been laid down directly<sup>5</sup> in each kind of action. *Dadyāditi vidhiyate iti.* (p. 12 l. 13) *Rule laid down.....be paid &c* (p. 26 l. 14) Because a double amount as fine does not arise. 30

1 The print in the text is अथ यत्न व्यस्यहरेति. It is a mistake. Read अपनव्यस्यहरेति. See *Mutākhata Text* p. 12 l. 10

2. Yaṣṇ. II. 42. see note on p. 26 Mit Engl. Tr

3. Yaṣṇ. II. 11.

4. सूत्रपरिचय — Lit. taking by the horn i. e. in a direct manner

When one is asked to point which out of the many cattle belonged to him and he indicates some by catching hold of the horn. The point of this maxim is that it is done on the spot by pointing directly and the object of perception is indicated by a portion only यदेकानामप्येकस्योत्तरं सूचये.

## Yājñavalkya Verses 13-15.

Deśāddeśāntaram yāti ubhiyogetha sākṣhye wā duṣṭaḥ sa parikīr-  
titaḥ iti *Who shifts from place to place.....is known as defective and*  
5 *unfit to be a complainant or a witness &c.* (p. 27, l. 16 and l. 21.) Predi-  
cating by (the expression) 'in mind, speech, body and action' and in-  
dicating the deformity of action, in body, speech and mind in an inverse  
order by the text beginning with (the passage) 'shifts from place to place'  
&c., the object of the Lord of the Yogis is this : by an exhibition of de-  
10 formity in a broad manner, and obvious still more in the order of the  
organs, exhibiting the (hollowness of the) answer, by outward manifes-  
tations ; these three presently to be mentioned, are not only vicious, but  
deserve to have their complaint to be dismissed, and punished also.

## 15 Yājñavalkya Verse 16.

Kincheti (*Moreover &c.*). Sandigdhamityādīnā (*doubtful etc.*  
p. 28, l. 23) where both the litigants have set up claims, and having  
explained themselves in their first complaints, [afterwards] ask that the  
witnesses for the complainant and the opponent should be examined,  
20 and thus set up a new plea [in defence]: with a view to refute this  
the Author explains.

## Yājñavalkya Verse 17.

Mithyottare Pūrvavādīna iti (p. 14. l. 1)—*the answer is by denial*  
of him who claims priority &c. (p. 29. l. 32.) Pratijñātārthasādhana-  
25 *anensalvoktatvāditi (having been laid down in the text.....the evidence by*  
*means of which the matter in dispute is to be established* (p. 29. ll. 35-36)  
What is asked for is Artha. He who has it i.e. he who has to  
establish it. Thus in an answer of denial, the party who sets up the  
complaint, has the burden of proof on him. In the pleas of confession  
30 and avoidance, and of a former judgment, however, the person setting  
up a defence has alone the burden. The meaning is that the rule  
intended to be conveyed is that he who has to establish a point under  
dispute has on himself the burden of proof.

## Yājñavalkya Verse 19.

35 Yasmātbhūtamapīyādīnā (p. 14. l. 23) *since, even a real claim &c*  
(p. 31. l. 3.) Even a real claim i. e. a true cause if not properly established

by proper means of evidence i. e. of witnesses &c. in a judicial proceeding. This is the connection. Dwigatrititi (p. 14. l. 27) to have two courses (p. 31. l. 15) i. e. is of two kinds. This is the meaning.

### Yājñavalkya Verse 20.

*Ninhute likhitam naikamiti* (p. 15 l. 2) sets up a denial, and it is not confined to one only &c. (p. 31. ll. 26-27.) In this passage, in the first three quarters, this is the sense intended to be conveyed: If when the defendant denies in entirety the claim made by the plaintiff at the first complaint on oath plaintiff proves his claim even as to some portion, then the defendant must be ordered to pay the whole of the amount claimed. In the fourth quarter<sup>1</sup>, however, this is the sense conveyed: A plaintiff should not be allowed to set up additional allegations not mentioned in the first information on oath. Thus by these two rules, it has been established affirmatively that only such a cause as was mentioned at the first complaint on oath can be decreed in a judicial proceeding, and also by the negative method that a cause not stated shall similarly not be secured. Since by the two-fold method of reasoning viz.<sup>2</sup> the affirmative and the negative, the rule that even a fact if not well established is defeated at a trial has been confirmed, hence an illustration for the same. This is the meaning.

• *Tarkāparanāmeti* (p. 8, l. 37) an alias for logic &c. (p. 32, l. 12) A deduction from probative reasoning is another term for a logical deduction. By the combined effect of such a deduction, *Asmādyogīśvara-vachanāt* (p. 15, l. 10) From this text of the Lord of the Yogis<sup>3</sup> (p. 31, l. 11) viz. where he sets up a denial. *Nyāyādhigame Tarka iti* (p. 15, l. 12) Rules of logic are a means of arriving at a judicial decision (p. 32. l. 12-18).

1 Of the verse 1 e 20

2 अन्वय and अतिरेक-1. e the two methods of stating a proposition in sanskrit logic viz, assertion of the constant and invariable concomitance (अन्वय) of the major (मह्य) and the middle (हेतु) term, and second of the concomitance of the absence of these, known as अन्वयव्याप्ति and अतिरेकव्याप्ति, यत्तत्त्वे यत्तत्त्वमन्वयो, यद्भावे यद्भावे अतिरेक . The first is instanced in यत्र यत्र धूमस्तत्र तत्र वह्नि where ever there is smoke there is fire, and corresponds to the universal, A proposition of European logic. All A is B. The second is instanced in यत्र यत्र वाहिर्वाहति तत्र तत्र धूमोऽपि नास्ति when there is no fire, there is no smoke also—and corresponds to the converted A proposition—All not B is not A.

A cause or हेतु is said to be connected by अन्वयव्याप्तिरेकव्याप्ति when both the affirmative and negative relations between the thing to be proved and the cause that proves it can be equally asserted, such a *Hetu* alone makes the argument perfectly sound and incapable of refutation. This process of arriving at the *Vyāpti* or universal proposition corresponds to the methods of Agreement and Difference in Mill's Logic. *Apte* See also note 2 page 2 *Mitāksharā* Tr.

3. योगीश्वर — 1. e the sage Yājñavalkya The author uses this expression as indicative of respect to the learned sage

The meaning of the above is this : For arriving at a just conclusion logical reasoning is a means. By means of the logical reasoning, having reached the just deduction of law, it should be directed towards the subject with reference to which justice is to be administered. Or, should be placed in the proper position so as neither to be less nor more.

It may be objected that just as in the case of a plaintiff he is not allowed, if he sets up a different case afterwards at his sworn complaint, similarly it may be that a defendant against whom proof has been established as to one portion ( of the complaint ), may also be disallowed, why should he be compelled to pay the entire claim ?

Anticipating such an objection, the Author says  
\* PAGE 9. Yes, it might have been so, if there were no express text; such a text, however, exists; so the Author

says, it is not that a defendant who has been confronted in one particular should be condemned as a false claimant. Because, a debt being incurred by another, in such a case there is the possibility of ignorance and (thus) a false plea may not exist. This is the meaning. *Anekārthābhīyogepīti Kātyāyanavachanamīti* ( P. 15. l. 18 ) *Even in suits involving several counts, the text of Kātyāyana &c* (p. 32. l. 27-28).

The general rule as contained in the text of Kātyāyana, putting aside the special rule applicable to the particular act, is made applicable to a defence made in ignorance. This is the order (of words). *Nīlāhavo* ( a false answer ) i. e. a ( wilful ) denial after knowledge. *Ajñānam* ( ignorance ) want of knowledge. *Sthiraprāyeṣhwīti in* (suits of a ) quasi-finite character &c. (p. 33. l. 12-13.)

The point at issue in a complaint such as 'adultery with women' or the like, is established only by signs—not a finite proof—so such suits are not of a finite nature. But in suits regarding the recovery of debts and the like, the point is (regarded as ) established only by positive proof, and so those have a quasi-finite character. This is the meaning. *Uchchyate Likhita-sarvārtha-sādhane*ti

The answer is—that...as the means of proving the entire claim ( p. 33. l. 19-20). The meaning is as follows: The text of Kātyāyana indicates that where in a complaint, viz. that he 'has taken gold, silver, and clothes' a denial is set up viz. 'I did not take', in such a case where witnesses are cited to prove the receipt of all the things mentioned, and prove either

one of the things viz. gold &c., or prove that gold, silver, clothes and even corn was taken i. e. more than the thing mentioned, even the entire claim is regarded as not established, while the text of Yājñavalkya lays down, that where a defendant is sued for gold, silver, and clothes as owing, and he denies and says that he does not owe, then if the plaintiff



It may be said, there can be a conflict of two Smṛtis only when they occur in one topic and convey opposite meanings, not when they relate to different subjects or do not convey opposite meanings; and it is only when there is a conflict that the thought of (discriminating) the strong or the weak occurs. And having already laid it down before,<sup>1</sup> as a rule that the administration of justice should be made in conformity with the principles of legal science, the science<sup>2</sup> of polity like the *Aśtanasa* does not affect the subject matter of a judicial proceeding. Therefore not having a common subject, a conflict between the science of polity and legal principles is far remote. Moreover even the thought of their relative strength or weakness does not appear possible. Thus anticipating an objection, the author says : true, that is so. Here there is no thought of the (relative) strength or weakness of the legal science and the science of polity like the treatise of *Uśanasa* or the like; but here the idea is of mentioning the relative strength and weakness of legal science and such passages of political science as are (found) incorporated into the legal science; and so he concludes *Dharma-śāstrānusāreṇaivetyanenaivetyādinā* (p. 161. 8) in conformity with the principles of legal science &c. (p. 35 l. 2-3)

If so, even then between such texts of political science, and the legal science, there can be no thought of discriminating the (relative) force and weakness of these texts also, since both having a common origin like *Manu* have no special feature as such inhering in the textual origin. Anticipating this, the Author says : *Yadyapi Samānakartṛkatayeti* (16-11.) *although as the authors are of equal (authority)* [ p. 35. l. 9-11. ] The condition of (relative) strength or weakness does not arise on account of any special feature intrinsic in the same, but he answers (the objection by pointing out) that in a proposition of law although it has six parts, the chief place being assigned to law, and equally (*per contra*) in a proposition of political science, the science of polity being regarded as subordinate, the relative

It is *Bhūtārthavāda* when it consists of a statement conveying something which is neither established by another means of proof nor is in contradiction with it e.g. इन्द्रो वज्रं वज्रमुद्वहत्—Indra raised the thunderbolt against Vṛtra. Note the following विशेषेण उक्तवत् : स्याद्दृढवादेऽप्यपारित्ये । धृतराज्यवाद्दृष्टव्यादर्थवादस्ति स मयः ॥

The *Arthavāda* plays an important part in the interpretation of passages and is the determination of their character whether obligatory, conditional, contingent or merely recommendatory.

1. i. e. Yājñ. II.

2. i. e. अर्थशास्त्र—Here the word is used in the restricted sense i. e. the science or art of Government and administration such as is expounded in the works of इन्द्रप्रति धृतराज्यवाद्, कौटिल्य. &c.



condition of strength and weakness holds on account of the special point in the proposition (under consideration). by  
\* PAGE 10. Tathāpi prameyasyeti: still of the principal subject &c. ( p. 35 l. 11 ). Sāstrāḍau darśitamiti: has already been demonstrated before (p. 35 l. 13 ) i. e. in the beginning<sup>1</sup> of the *Ācharādhyāya*.

5

The Author takes<sup>2</sup> up an illustration mentioned by others and considers Na tāvadgurum chetyādīnā beginning with not certainly a preceptor &c. (p. 36. l. 2), Dharmasāstram balavadityuktam ityantena and ending with the Dharmashastra should have force (p. 36. l. 15.) Here (at the time of construing the clause ), the term iti similar others ( l. 11. ) should be taken with not certainly (l. 2) na tāvat which has been placed at a distance.

10

The Author states the reason why the texts quoted cannot be taken as illustrative (of the rule). Anayorekavachanatwāsambhaveneti these two texts not being likely to be in ( reference to ) one subject (p. 36. l. 16.) The text ' the preceptor, or a child &c ' being by nature an Arthavāda text, and therefore of no force as an authority in the subject concerned, the two do not relate to one subject matter. Therefore the meaning is that it does not serve as an illustration, as there is no contradiction.

15

20

The Author explains the text Ātmanascha paritrāṇe and in their own defence &c. (p. 36. l. 26 ) in Ātmarakshaṇe dakṣhiṇādīnāmīti in self-defence or in the defence of the dakṣhiṇā ( p. 36. l. 22. ). The meaning is this : By the a fortiori<sup>3</sup> reasoning the killing of persons other than the preceptor and the like in such a case is being praised. Therefore by its laudatory nature it becomes an Arthavāda. Again it may be objected : that here the object intended is not the killing of the preceptor and the like, then whence could it be deduced? So the Author says wāśabdaśravaṇādītyādīnā from the use of the word wā &c (p. 37. l. 1.) This is the meaning: As by making an assertion viz. 'Here exists a ghost, it may be a ghost, or a demon, or even a goblin, or a dead being, the main

25

3

1. l. 6 from Verses 1-8. viz. its orbit of extent, sources, works, its definition ( verse 6 ), its indicative ( शिरस ) and operative ( कारक ) sources ( हेतुः )

2 V. L. वृत्तयति—i. e. refutes

3. हेतुनिश्चयः—meant to indicate that what applies to less strong cases must necessarily hold in a stronger one—the maxim of 'how much more or 'much more therefore'.

object is the maintenance of the assertion made, similarly in the Veda<sup>1</sup> (*Vāyu*) the wind is indeed (*vai*) the deity which is the swiftest<sup>2</sup> or "or those who approach these nights also become well established"<sup>3</sup> and in similar passages, the word *vai* (indeed), or the word *vā* (or), and such other words are indicative of an interruption in the force of the Vidhi text; similarly the words *vā* and *api* arrest<sup>3</sup> the full force of any affirmative injunctive command and there is no such injunction for killing the preceptor &c. Therefore under the texts<sup>4</sup> referring to the preceptor &c. viz. "a preceptor, child, or an aged man &c." and the like, an injunction as to killing not having been reached, nor in the texts<sup>5</sup> 'this expiation has been prescribed' and the like; therefore not having any occasion to be taken as an injunction for an expiation there is no mutual contradiction by which they could be taken as an illustration of the superior or inferior force. On the other hand both Sumantu and Manu having demonstrated an absence of guilt only in the killing of those other than a cow, a Brahmana, a preceptor, and the like, the preceptor and the like must not be killed even when, (attacking as) desperados, so the Author says *Nātatāyīwadhe doṣha &c.* (p. 161.25) *there is no guilt in killing an assailant &c.* (p. 37.1.11.) Indeed here in the text of Manu viz. *the preceptor, nor him who expounds the Vedas &c.* (p. 37.1.7) the mention of the preceptor &c. is merely illustrative. Moreover the intention being the prohibition of killing only, this text is intended to negative any injunction as to killing being directed to the preceptor and the like, and in that case there would be a conflict with the text of Manu viz. "whether a preceptor, child, or an aged man &c.", anticipating this, the Author explains *Āchāryādīnāmātātāyīnām himsāpratishedheneti* (p. 16.1.26) *it is intended to prohibit the killing of the preceptor and others &c.* (p. 37.1.10). The meaning is this: The prohibition of killing of any kind being established by a general text, and there being no reason why the words preceptor etc. are not specially intended to be indicated, this text can be with a purpose only if it be understood to signify the prohibition of a particular killing. By the general prohibition of any killing, this particular killing could be included in any of the text, and this text will be without

1. This is a quotation from the *वेदविवाहविधि*, II. I. I. The passage runs thus; *वयस्यैवैतन्मृत्युमोक्षाय वायुर्देवता देवता. &c.* He who is desirous of prosperity should offer a white animal to Vayu, Vayu indeed is the swiftest deity. This is always cited as an illustration of an *Arthavāda* compliment of a Vidhi.

2. For *वसिष्ठ* V. L. *वसिष्ठ*. This latter is a better and correct reading. This is the passage always quoted to illustrate the *वसिष्ठ* maxim. See *Jaimi* IV. 3. 8 (17-19) *Anandasrama* Vol 24 pp. 245. 46.

3. V. L. *वसिष्ठ*—

4. *Masa* XI 89

5. *Ch.* VII 35.

a purpose as tautologous. *Idam Vachanam* (p. 16. l. 27) *this text* (p. 37. l. 9) i. e. the text of Manu<sup>1</sup> viz. 'the preceptor' &c.

It may be said: indeed if this be so, then by the text 'the preceptor, nor him who expounds the vedas' &c (p. 37. l. 7) the killing even of preceptors and the like when attacking with a murderous intent is not prohibited. And by the text 'By killing a desperado the slayer incurs no guilt' (p. 46. ll. 5-6) an absence of blame for killing a desperado having been demonstrated, there would arise the inference that the preceptors and the like may be killed, and thus a conflict may arise between these texts, so the Author says: *Nātātāyivadhe dosho hanturbhavatī Kaschanetyetadapitī* (p. 16. l. 28) *even the text 'by killing a desperado the slayer incurs no guilt' &c.* (p. 37. ll. 12-13). The meaning is that as they refer to different objects there is no conflict. The Author points out the applicability (of the text) only to others than *Brāhmaṇas yato agnido* (l. 29) *since an incendiary &c.* (p. 37 l. 14). This is what is (intended to be) said: The desperado having been referred to generally, the rule that 'a guilt would be incurred viz by killing

\* PAGE 11. a desperado' would<sup>2</sup> not be a rule of general application. While the special text viz. 'There is no guilt in killing a desperado' would have a particular reference only to the text 'the preceptor or him who expounds the vedas' (p. 37 l. 7) i. e. it would apply in the case of those excluding the *Brāhmaṇas* and the like. This then being established, viz. the immunity for desperados who are *Brāhmaṇas* or the like from being killed, if through accident a killing occurs of *Brāhmaṇa* desperados, then as the killing was accidental would the killer be entirely free from blame? anticipating this question the Author says *Atascha Brāhmaṇādayaḥ* (p. 16. l. 31) *therefore Brāhmaṇas &c.* (p. 37. l. 23). The Author gives an illustration of his view by *Taduchyate* (l. 31) *should be cited &c.* (p. 37. l. 27). *Ata eva Dharmārthasannipāte iti* (p. 17. l. 7) *hence only when dharma and artha come into conflict &c.* (p. 38. l. 2), since the legal science has more force. Hence i. e. for this reason. This is the meaning.

### Yājñavalkya Verse 22.

*Śāsanamuktalakṣhaṇamiti* (p. 17. l. 13) *A royal grant has been defined before &c.* (p. 38. l. 17) i. e. as stated in the text<sup>3</sup> viz. "When making the grant of a land or of a corrody it should be done after the

1. Ch. VII. 351. 2. Inl. 31 on p. 10 for वदुर्लभदानाधिक्ये read वदुर्लभान्न नादानाधिक्ये.  
3. In *Āobhāraśāhyā* Verse, 318.

execution of a document" etc. *Prakāraḥ kind* (p. 38. l. 20) i.e. variety. Such as eye-witnesses, hearsay-witnesses &c. and the like. Character as well as kind; those whose character and kind are presently to be mentioned; these, of that description.

- 5 It may be said that what is included in the direct and the like (varieties of evidence) alone can be (regarded as) evidence and none else. Thus a document is evidence through the context in words written on it; while witnesses are evidence on account of the words uttered by them. In which kind of evidence is possession included  
10 that it may be regarded as a means of proof? Anticipating this the author says: *Nanu likhitasya Sākṣiṇām Chhetī* (p. 17. l. 16) *It may be said that a writing and witnesses &c.* (p. 38 l. 21). The Author mentions things included as evidence; *Uchyate the answer is* (p. 38. l. 25). *Bhuktirapi*  
15 *kāśchidviśeṣaṇairityādinā* (l. 17) *even possession when satisfying certain conditions &c.* (p. 38. l. 26). The conditions will be made clear at the time of construing the probative value. This is the meaning: *Anumāne arthāpattau vā antarbhavatīti pramāṇamiti* (l. 18) *be included in an inference or an implication and be a good means of proof &c.* (p. 38 l. 29-31). This land &c. purchased by him, deserved to be his, as in  
20 the absence of an obstruction it is fit to be enjoyed long, as this is evidence of an admission<sup>1</sup> (of his title). This is an instance of *inference*. Or, this Devadatta had obtained by purchase or the like the property viz. the field &c. since he has been in uninterrupted possession for a long time, or has been admitted<sup>2</sup> to be the owner of the field etc.  
25 From the fact of an uninterrupted possession for a long time and from no other theory an inference of a purchase is drawn and therefore it is an *implication*.<sup>3</sup> Thus the title by purchase etc. being established by inference or implication, the right of ownership follows on account of the invariable<sup>4</sup> sources of title laid down in texts<sup>5</sup> such as "An owner is by  
30 inheritance, purchase, partition, acceptance, finding &c." and the like.

By the text<sup>6</sup> *Eṣhūmanyatamābhāve divyānyatamamuchyate* in the absence of these the ordeal is said to be another (p. 38.

1. i. e. even though there is no actual admission on record, one such may arise by inference from conduct.
2. संनिवृत्तः
3. अनुमितिः i.e. a necessary inference, an inference from circumstances, presumption or an implication; it is deduction of a matter from that which could not else be.
4. The student will note that the five modes stated here are universally indicated as the sources of ownership and are found in all systems of law.
5. Gautama X. 39. Cf. Mitāksharā I l 8. where this text is quoted.
6. Yajan. V. 22.

11.10-11) is intended to be laid down that there would be scope for an ordeal only when none of the human means of proof are available. Not only that, but it is only after a (clear) conclusion is reached viz. that human evidence is not available, that an ordeal should be resorted to as evidence. So the Author says *Mānushābhāva eveti* (p. 17.1.20), in the absence of human evidence &c. It may be asked, whence is the rule obtained that 'it is after a conclusion is reached that human evidence is not available that an ordeal should be resorted to' so the Author says, *Asmādeva Vachanāditi* (p. 17.1.18) from this very text &c. (p.39.1.5.) i.e. it has been so said viz. that it is an inference deduced from this very text. 5 10

The Author mentions a reason for this : *Divyasya swarūpaprāmāṇyayoritī* (p.17.1.21) the nature and conclusiveness of ordeals &c. (p. 39.1.6). This is the meaning: It would be against rules of law to resort to the invisible when visible means of proof are (available); moreover the nature of an ordeal as also its evidentiary character is obtained only from the *Śāstras* and not pertaining to this world; it is (an) invisible (means of proof) and, therefore, so long as there is a possibility of the visible means of proof there would be no scope for the invisible proof from the text "in the absence of any of these &c." the inferential deduction becomes established viz. that it is only after a conclusion as to the absence of visible proof is reached that an ordeal should be resorted to as evidence. Where means are available for establishing the entire point at issue and not human, but even divine proof is adduced, in such a case let human proof alone be acceptable. Where, however, human proof is available only as to a portion of the point at issue while the divine proof is for the entire point at issue, in such a case which should be accepted? To such a question the Author propounds an answer by anticipation *Yatrāpi pradhānānkadesasādhanaṁityādīnā* (p. 17.1.21) Even so...for establishing a portion of the principal point (at issue) (p. 39.1.13-14). That is called the *principal* which is the original amount without interest; a portion of that. Thus e. g. 'he borrowed a hundred rupees at this rate &c. the borrowing a hundred rupees is the principal; receipt of rupees only is a portion, the amount is another portion. 15 20 25 30

*Asya chāpawādo dṛṣyate iti* (l. 32 p. 39 l. 37) An exception to this, however, has to be noticed &c. What has been stated as a general rule viz. 'that a trial by ordeal is allowable only where human evidence does not exist.' (p. 39. 35

PAGE 12.\*

1. Because being an invisible means of proof its substratum can only be a text and not any demonstrable reason. 2. I. e. in II 22 above. 3. ग्राह्यः

11. 35-36), as a rule of option has been stated as to the witnesses and the ordeal this is an exception to the conclusion stated before.

Tathā lekhyādīnāmīti (l. 33) moreover...about a writing &c. (p. 40. 1. 3). By the term *Ādi* (&c.) are included possession and witnesses.

5 Tathā dwāramārgakriyābhogeti (p. 18.1.2.) similarly...regarding the right of door or way or the right &c. (p. 40.1.7) The right of making a door, as also of making a way; thus the term making is connected with each (word) making a door as also making a way. There as also regarding surface (Ābhoge). *Ābhoga* (means) extent, and thus are indicated

10 things having an extent such as a courtyard and the like. As also regarding watercourses and the like. A *Jalawāha* or a watercourse—a way for water. By the term *Ādi* are included in the case of a house and the like the place where heaps of scoured dust are thrown, or the privy &c., In the case of these i. e. those mentioned before possession alone is the

15 proof i.e. evidence, not ordeal, nor even witnesses are evidence. So also *Dattādatteti* (p.18.1.3) valid and invalid gifts &c. (p. 40.1.11). A valid gift and an invalid gift (make up the compound word) valid and invalid gifts; regarding these i. e. known as 'Resumption of gifts' or the one known as 'A dispute, between a master and a servant', or as 'Rescission of sale'.

20 Gambling as well as betting (together make up the word) gambling and betting. Also in a dispute known by that title, when set up, witnesses alone are the means of proof and not any other. This is the meaning. These titles at law will be expounded later<sup>1</sup> on.

### Yājñavalkya Verse 23.

25 The Author mentions an illustration for the rule<sup>2</sup> "In all civil disputes regarding property, evidence adduced in support of a later transaction preponderates"; Tathā pūrvam dwikam śatamīti (l. 12). Similarly, where after first taking at two per cent &c. (p. 41.11.7-8). Having first drawn a loan on an agreement that for a hundred *niṣkhas*,<sup>3</sup> the interest shall be two *niṣkhas*, at a later time, owing to personal needs, on

30 an agreement for three *niṣkhas* as the interest for the same one hundred *niṣkhas*, this later (transaction) has force. Because as the two are contradictory (of each other), (the later) one cannot be established unless the first is refuted.<sup>4</sup>

1. i. e. in Chapters XII, XIV, XVI, XVII treated later on. 2. In Yajñ. II. 23.

3. A golden coin of different values, but generally equal to one *karṣa* or *suvarṇa* of 16 *maṣhas*. 4. V. L. तृतीयतः.

Nyâyamûlamevedam vachanamiti (l. 50.) *that this text is based on reason &c. (p. 41. l. 32).* Of a thing once taken by, or given or sold to one there cannot exist a proprietary interest for the purpose of again effecting a pledge &c of it anywhere else. This itself is the rule, and this text is based on this very rule as its reason. The meaning is that with a view to make it easily comprehensible the same conclusion established by this rule is repeated again in another manner or, (it may be understood thus); this text is the very basis of the rule, thus : By this text, having laid down the rule ( of law ) that in the case of pledges and the like transactions the prior one preponderates, on the strength of that ( rule ), of a thing once kept as a pledge at one place, there cannot be another pledge etc. at any other place, owing to the absence of the right of ownership. This rule is thus deduced. Thus the expression ' this text has reason for a base ' is to be construed.

### Yâjñavalkya Verse 24.

Bhukteḥ Kâlśchidviśheṣaṇalryuktâyâ iti (p. 18. l. 22) *of possession when accompanied by certain qualifying circumstances &c. (p. 41. ll. 33-34).* Absence of interruption, and continuance for a long time—are the qualifying circumstances ; accompanied by these.

The Author now takes up a position viz. Paśyatobruvata &c. *while he sees...looks on &c. (p. 41. l. 38)* and expounds it by Pareṇa asambandhena Bhuḥyamânâmiti yâdinâ (l. 25.) *by a stranger i. e. by one having no connection being enjoyed &c. (p. 42. ll. 3-4.)*

An objection : Indeed, on account of non-interruption the owner's proprietary right is not lost, and as the right of ownership cannot accrue to the occupant by possession for twenty or more years, the loss after twenty or ten years does not arise at all. Anticipating this the Author says. Nanu tyâdinâ (l. 28). *Indeed &c. (p. 42. l. 10.)* The Author states that by mere non-interruption, the proprietary right cannot be lost, (by) na hyapratisheddhâditi (l. 28) *Certainly.....not on account of non-protest &c. (p. 46. l. 11.)* Then the Author mentions the reason Apratiṣiddhasyeti (l. 28) *non-protest &c. (p. 46 l. 11).* The meaning is, that as gift, sale and the like have been established among the people as well as in law, as causes destroying ownership, such is not the case with non-protest.

The Author discusses the possessor's right as to ownership by possession: Nâpi vimśativarṣhopabhogâditi (l. 29) *nor.....by possession*

- for twenty years &c. (p. 42.1.14.) There the author mentions the reason Upabhogasya swatwe<sup>1</sup> apramāṇatwāditi (l. 29-30) because possession is not the means of ownership &c. (p. 42.11.14-15). The meaning intended is this : As the inference from the smoke leads to the knowledge of the existence of fire in the mountain, and does not create it, in the same manner possession is simply indicative of ownership which is the point to be established by it. Therefore, ownership does not spring up from possession. The Author mentions another reason for the position that there can be no (right of) ownership by possession. Rkthakrayā-
- 10 dīṣhwiti.<sup>2</sup> (l. 30) among inheritance, purchase &c. (p.42.1.) The meaning is that among the originating causes enumerated, possession not having been mentioned, it does not possess the power to be the originating cause. The Author indicates the absence of enumeration
- 15 \* PAGE 13 itself among the originating causes. Tathā hi Swāmī rkthakrayeti. (p.181.31) For, a man becomes owner... by inheritance &c. (p.42.1.18). The meaning of the text of Gautama is this: When there exist inheritance, purchase, partition, seizure or finding one becomes an owner. Thus this sets out the enumeration of the all round general originating causes of ownership. Unobstructible heritage is
- 20 (rktha) inheritance. An obstructible heritage is partition (Samvibhāga); seizure (Parigrahaḥ) is the appropriation of things such as grass, weed &c, in the forest &c unappropriated by any other. Finding (adhigamaḥ) i. e. acquisition<sup>3</sup> of things such as a hidden treasure and the like. The Author mentions the special<sup>4</sup> causes (of the origin of ownership)
- 25 Brāhmaṇasyādhikarṇaṁ labdhamiti. (l.31) In the case of a Brāhmaṇa such acquisitions as are made by a gift or the like, being an additional special (cause) (p. 42.1.20). For a Śūdra such acquisitions as are made in the form of wages obtained for service rendered to the twice-born or the like is an additional special<sup>5</sup> (cause); for, according to the lexicon of Amara<sup>6</sup>
- 30 "the word nirveśa is used to indicate wages or possession".

It may be said; indeed, this very text<sup>7</sup> of the Lord of the Yogis viz. "looks on and does not object" &c. may be taken as mentioning the originating cause of the right of ownership, so the Author says na chedamevavachanaṁiti nor.....this very text

35 &c. (p. 42.1.24). The reason for it is swatwasya swatwahetūnāncheti (p. 19.11.1-2) of a title by ownership or its origin &c. (p. 42.1.15).

1. Here there is a mistake in the print, for स्वतवे प्रमाणत्वाद् read स्वतवेऽप्रमाणत्वाद्.

2. Vide the text of Gautama see note on page above.

3. I.e. finding.

4. I. e. additional causes as mentioned in each case.

5. Vide Gautama X. 40-42.

6. IIL 3. 214.

7. Yajñ. II. 24.



The meaning is this: Popular usage never functions in establishing something which is non-established, as an injunction (*vidhi*)<sup>1</sup> does. *Etacheha vibhāgaprakaraṇa* Iti (l. 2). *This moreover.....in the chapter on Partition &c.* (p. 42. l. 29). This i. e. that portion which deals with the ownership and the causes of ownership being established by popular usage.

It may then be asked: If this be so then what of the text of *Gautama*? so the Author says; This only becomes enumerated in the *Śāstra* that ownership should be asserted to arise, and not by those not enumerated<sup>2</sup> as the general rule i. e. that from which what did not exist before is created and not as implying that ownership or the causes leading to ownership are to be found in<sup>3</sup> the *Śāstra*. So the author says *Gautamavachanamiti* (l. 3) *The text of Gautama however &c.* (p. 42. l. 29). *Anāgamopabhogasya swatwahetutwe viruddhyate* Iti (l. 5.) is opposed to the theory that possession without title is the source of ownership &c. (p. 42. l. 34.) If possession without title created ownership the prescribing a punishment for the man in possession would be impossible. But a punishment has been laid down. Therefore also, even in contradiction to that text, ownership cannot arise by possession. This is the import. Again even with the contradiction, in no case whatsoever would the right of ownership arise by possession. But there is no contradiction; for by the text *Anāgamaṃ cha' yo bhunkte* (l. 3.) *He who enjoys without title &c.* (p. 42. l. 31) the following rule is laid down, the right of ownership not arising from possession in the absence of the owner, even though for a long time, the man in possession should be punished as a thief; while the text<sup>4</sup> "looks on and does not object" lays down the following rule: The (owner's) title becomes extinct after twenty years' possession without interruption in the presence of the owner, and the right of ownership arises in favour of the possessor on account of (his) possession. Thus the difference between these two texts is not on account of the presence or absence. Therefore it may be argued that under the text 'looks on and does not object' the right of ownership may not arise by possession; so the Author refutes by *na chānāgamam tu yo bhunkte ityetaḍiti* (l. 5) *nor also...the text he who enjoys without*

1. अज्ञातव्यवृत्ति A *Vidhi* is an expression of an injunction when something non-established has been enjoined.

2. See *Bhambhani* p. 31. ll. 25-27, where this has been made further clear.

3. Such as in the text of *Gautama* and similar others

4. V. L. ५ Tu as is in the original *Mittakshari* text.

5. *Yajñ.* II. 24.

title &c. (p. 42 l. 34; p. 43 l. 1). Indeed by a bare statement, the meaning does not become established. Anticipating this the Author mentions the reason, Anāgamam tu yo bhuṅkta ititi (l. 6) *he who enjoys without a title &c.* (p. 43 ll. 3-4). This is the import: Having laid down  
 5 that 'he who enjoys without a title should be punished' as a general rule without any particular reference to the presence or the absence it is not proper to reach a conclusion by relation to the presence or the absence. There is no contradiction. Nopabhoge balam Kāryamiti (l. 7) *should not rest his case on possession &c.* (p. 43. l. 6). The meaning  
 10 is that on the mere strength of possession one would not succeed. Samakṣhabhoge<sup>1</sup> cha hānikāraṇābhāveneti (l. 8) *moreover an extinction of title is not possible in case of a possession with notice &c.* (p. 43. l. 7). The right of ownership would not be lost on account of non-interruption, nor would it be acquired by possession; therefore, in pursuance of  
 15 what has been said before, an absence of the cause of extinction need not be observed.

It may again be said, let not the text 'looks on and does not object' be interpreted as has been done before. In the text "In the case of a pledge, of a gift, and a sale &c." preponderance for a prior trans-  
 20 action has been mentioned in pledges and the like; by way of exception to this has been mentioned a later transaction relating to land accompanied by possession for twenty years, while in money dealings a later transaction of ten years' duration as having greater force. It may then be asserted that thus in similar cases, even in transactions of pledge  
 25 and the like a later one also should be accepted: anticipating this the Author removes it nachaitan mantavyamityādina (l. 9) *Moreover it should not be supposed &c.* (p. 43. l. g. l. 10). Here transaction means (Kṛiyā) doing (Karaṇam) i. e. an act (Kṛtiḥ). The objector would maintain that in the case of land, excepting those cases where  
 30 possession has not been for twenty years, as also in money transactions where possession has not been for ten years, a prior transaction of pledge and the like will indeed prevail, and that where

\*PAGE 14. this does not exist, a pledge or a similar transaction of a later date would have more force than a pledge and the  
 35 like of a prior date. While the purport of the respondent is that a later transaction itself being absent there is no possibility of a later transaction preponderating over a prior one, for, attributes can be considered (only) when one possessing the attributes exists. Moreover,

1. i. e. with the knowledge of the owner. This is one of the elements of what is known as 'adverse possession'.

if this were so, there would be a contradiction between the texts of the Lord of the Yogis mentioned before and to be mentioned hereafter, and that would be meaningless; so the Author says *Tathādhyādinām trayā-ṇāmiti*. Moreover—of the three—viz. pledges &c. (p. 43 l. 24.) The import is this : The objector says, a pledge or a like transaction of a later date accompanied by twenty years' possession or ten years' possession is strong, and that *per contra* a prior transaction will have less force. This is what is (intended to be) stated by the text "looks on and does not object etc." To this, the reply is, by the text<sup>1</sup> "Except in the case of pledges, boundaries, open deposits, wealth belonging to the dull in intellect, the minor &c." which follows later as an exception to the one stated before, the rule has been stated that in the case of a pledge, a later transaction has no force. Moreover by interpreting the prior text as giving greater force to a transaction of a posterior date, the text next following which lays down a contrary rule, would be meaningless. It may be said, it may be that the right itself may not become extinct after twenty years by pledges and like transactions in the case of land &c. but judicial remedy would be lost in each of the transactions; so the Author says *Nāpi vyawahārahānirīti* (l. 15) *nor is the cause of action lost* &c. (p. 43. l. 27). The reason for this is *Yata Upekṣhām Kurvata iti* (l. 15) *For.....of him who neglects* &c. (p. 43. l. 28). The Author demonstrates the very meaning and purpose of this text as has been stated before: *Iti Nāradenopekṣhābhāvakṛta iti* (l. 16). *Thus Nārada has mentioned the extinction when there is neglect, and such neglect is not accompanied by circumstances explaining* &c. (p. 43. ll. 29-30.). Those circumstances such as idiotcy, infancy and the like which lead to forbearance; caused by these i. e. on account of these. This is what is intended to be said; Even when no circumstances existed for forbearance, why did he not institute a suit when his own right was contested? When thus charged by the defendant the plaintiff has no answer to give. In this manner has been mentioned the absence of a judicial remedy by Nārada, since he has specially spoken 'of him who neglects'. There it is not possible to state that a right itself is without a judicial remedy.

The Author expounds the text "looks on and does not object" in another way by *Atha matam* (l. 24) *it may also be said* &c. (p. 44. l. 14) This is the meaning : By uninterrupted possession for twenty years, also by a similar possession for ten years, the loss of the land<sup>2</sup> &c, or<sup>3</sup>

1. Yaṇ. II. 25

2. For दृष्टादिकस्य V. L. दृष्टादिकस्य.

3. V. L. T. व्यवहारस्य वा दानिः

the loss of the right there is not demonstrated by this text. But when one's own property is being enjoyed in<sup>1</sup> one's own presence and if the owner does not raise any objection then in course of time there may arise a fear about the loss of a judicial remedy, and so an objection must  
 5 be raised in order to obviate a fear as to the loss of a legal remedy, and so the rule as to the raising of an objection has been prescribed. The Author refutes the interpretation also by Tachcha netyâdinâ (p. 19 l. 25) *However, it is not so &c.* (p. 44. l. 17). Has this advice that 'one should not stand by' an invisible<sup>2</sup> purpose or a visible purpose? Not  
 10 indeed a visible purpose. For in that case this advice should be taken as prescribed (only) when there exists a fear as to the loss of a judicial remedy. That, moreover, would arise only when any reason exists for the fear of the loss, and not when it does not exist; and that reason is possession measured by twenty years or the like. Then indeed it must  
 15 be another. Not certainly the other. That has not been so mentioned in the text, nor is it possible. Thus having removed it at the outset and intending to add that the possession is also not like that, the Author says *Smârtakâlâyâ bhukteriti* (l. 25). *Of possession within memory &c.* (p. 44 l. 18) This is the meaning: where it is alleged that 'he is in possession  
 20 of my land &c. without a gift or the like' the possession must be within memory and there would be no fear of the loss of a suit on account of such a possession, because it is possible to have witnesses and the like. Nor is it for an invisible purpose: so the Author says *tûṣhṇīm na sthâtayamīti* (p. 19 l. 26) *one should not stand by &c.* (p. 44. l. 20). This clause is to be taken in connection with what follows  
 25 later on viz: or if the only object was to lay down the rule that (one) should not stand by. *Avivakṣhitam*<sup>3</sup> (l. 29) *without a purpose &c.* (p. 44 l. 21). i. e. does not fit. The meaning is this: It has to be assumed that the direction that one must not stand by, has an invisible result; and that result is to be assumed on the strength of the express  
 30 rule; the assumption is stronger. It will be seen that the invisible is not (accepted) first<sup>4</sup> *vide* the rule "Even the hundredth part<sup>5</sup> of the end of a hair must not be assumed without a proof". This assumption, moreover, becomes possible when there is no (other) way. As  
 35 this text can be applied in a different manner in accordance with what will be said hereafter, there is no<sup>6</sup> reason for assuming that this text

1. V. L. स्वतन्त्रमेव स्ववस्तुनि. &c.

2. i. e. for an invisible object.

3. Here there is mistake in the print अद्वयव्यभिचि is to be in the ordinary type.

4. Another reading is अत्र तावत्तद्विधिं वदिते ।

5. For बालाग्रदन्तबाला read बालाग्रदन्तमाली.

6. Con. p. 15 l. 1 for शार्पकम्बकपदादौ read...व्याप्तौ.

- \* PAGE 15. can be found to have a meaning only by asserting an invisible purpose; therefore this advice that 'one should not stand by' has not an invisible purpose.

The Author points out a flaw even by assuming this text as having an invisible purpose *Vimsatigrahaṇamavivakṣitam syāditi* (p. 19. l. 16.) *The use of the term twenty would be without a purpose* (p. 44. ll. 20-21). The expression 'would be without a purpose' connects the last of the foregone portion and the last of this text.

This is the meaning: The advice that 'one should not stand by' has an invisible purpose. By raising an objection some invisible result is produced and therefore it is that the advice<sup>1</sup> viz. "one should not stand still" is given. And the same result may be accomplished by the rule 'of twenty years' i. e. by a mere negation viz. that even<sup>2</sup> in the absence of the limit of twenty years one should not stand by, and thus the word twenty would be without a purpose i. e. meaningless. Or perhaps the context of the explanatory passage may<sup>3</sup> be explained thus: that (purpose) may not be accomplished by an easy path securing the mental satisfaction for all the people. The Author exposes the fault in that explanation<sup>4</sup> also by *Tachha netyādīnā* (p. 19. l. 25.) *Even that is not so &c.* (p. 44. l. 28.) This is the meaning: It does not hold to say that this advice is for avoiding the absence of a rebutting cause for extinction of a title at law in regard to possession which is within the period of memory e. g. in a complaint that he is in possession of my land &c. with any (title) gift or the like &c. And therefore it must be said that this much is advised viz. 'one must not stand by'. Moreover the term *twenty* would be without a purpose and meaningless. Why? For want of a visible purpose this advice must be supposed to have an invisible purpose. Because an invisible purpose can hold even in the absence of a limit in the form of twenty years. Hence, it is that the word *twenty* is without a purpose.

The Author refutes the portion that the word twenty is meaningless by *Atrachyate ityādīnā* (p. 19. l. 27) *It is, next be said &c.* (p. 44. l. 22) The import is thus: By the text 'one does not object,' so much<sup>5</sup> only is advised viz. "one must not stand by" and nothing more. Even then the word twenty is with a meaning. Because, if the owner does not raise an objection for twenty years

1. V. L. ११ १२ १३ १४ १५ १६ १७ १८ १९ २० २१ २२ २३ २४ २५ २६ २७ २८ २९ ३० ३१ ३२ ३३ ३४ ३५ ३६ ३७ ३८ ३९ ४० ४१ ४२ ४३ ४४ ४५ ४६ ४७ ४८ ४९ ५० ५१ ५२ ५३ ५४ ५५ ५६ ५७ ५८ ५९ ६० ६१ ६२ ६३ ६४ ६५ ६६ ६७ ६८ ६९ ७० ७१ ७२ ७३ ७४ ७५ ७६ ७७ ७८ ७९ ८० ८१ ८२ ८३ ८४ ८५ ८६ ८७ ८८ ८९ ९० ९१ ९२ ९३ ९४ ९५ ९६ ९७ ९८ ९९ १०० १०१ १०२ १०३ १०४ १०५ १०६ १०७ १०८ १०९ ११० १११ ११२ ११३ ११४ ११५ ११६ ११७ ११८ ११९ १२० १२१ १२२ १२३ १२४ १२५ १२६ १२७ १२८ १२९ १३० १३१ १३२ १३३ १३४ १३५ १३६ १३७ १३८ १३९ १४० १४१ १४२ १४३ १४४ १४५ १४६ १४७ १४८ १४९ १५० १५१ १५२ १५३ १५४ १५५ १५६ १५७ १५८ १५९ १६० १६१ १६२ १६३ १६४ १६५ १६६ १६७ १६८ १६९ १७० १७१ १७२ १७३ १७४ १७५ १७६ १७७ १७८ १७९ १८० १८१ १८२ १८३ १८४ १८५ १८६ १८७ १८८ १८९ १९० १९१ १९२ १९३ १९४ १९५ १९६ १९७ १९८ १९९ २०० २०१ २०२ २०३ २०४ २०५ २०६ २०७ २०८ २०९ २१० २११ २१२ २१३ २१४ २१५ २१६ २१७ २१८ २१९ २२० २२१ २२२ २२३ २२४ २२५ २२६ २२७ २२८ २२९ २३० २३१ २३२ २३३ २३४ २३५ २३६ २३७ २३८ २३९ २४० २४१ २४२ २४३ २४४ २४५ २४६ २४७ २४८ २४९ २५० २५१ २५२ २५३ २५४ २५५ २५६ २५७ २५८ २५९ २६० २६१ २६२ २६३ २६४ २६५ २६६ २६७ २६८ २६९ २७० २७१ २७२ २७३ २७४ २७५ २७६ २७७ २७८ २७९ २८० २८१ २८२ २८३ २८४ २८५ २८६ २८७ २८८ २८९ २९० २९१ २९२ २९३ २९४ २९५ २९६ २९७ २९८ २९९ ३०० ३०१ ३०२ ३०३ ३०४ ३०५ ३०६ ३०७ ३०८ ३०९ ३१० ३११ ३१२ ३१३ ३१४ ३१५ ३१६ ३१७ ३१८ ३१९ ३२० ३२१ ३२२ ३२३ ३२४ ३२५ ३२६ ३२७ ३२८ ३२९ ३३० ३३१ ३३२ ३३३ ३३४ ३३५ ३३६ ३३७ ३३८ ३३९ ३४० ३४१ ३४२ ३४३ ३४४ ३४५ ३४६ ३४७ ३४८ ३४९ ३५० ३५१ ३५२ ३५३ ३५४ ३५५ ३५६ ३५७ ३५८ ३५९ ३६० ३६१ ३६२ ३६३ ३६४ ३६५ ३६६ ३६७ ३६८ ३६९ ३७० ३७१ ३७२ ३७३ ३७४ ३७५ ३७६ ३७७ ३७८ ३७९ ३८० ३८१ ३८२ ३८३ ३८४ ३८५ ३८६ ३८७ ३८८ ३८९ ३९० ३९१ ३९२ ३९३ ३९४ ३९५ ३९६ ३९७ ३९८ ३९९ ४०० ४०१ ४०२ ४०३ ४०४ ४०५ ४०६ ४०७ ४०८ ४०९ ४१० ४११ ४१२ ४१३ ४१४ ४१५ ४१६ ४१७ ४१८ ४१९ ४२० ४२१ ४२२ ४२३ ४२४ ४२५ ४२६ ४२७ ४२८ ४२९ ४३० ४३१ ४३२ ४३३ ४३४ ४३५ ४३६ ४३७ ४३८ ४३९ ४४० ४४१ ४४२ ४४३ ४४४ ४४५ ४४६ ४४७ ४४८ ४४९ ४५० ४५१ ४५२ ४५३ ४५४ ४५५ ४५६ ४५७ ४५८ ४५९ ४६० ४६१ ४६२ ४६३ ४६४ ४६५ ४६६ ४६७ ४६८ ४६९ ४७० ४७१ ४७२ ४७३ ४७४ ४७५ ४७६ ४७७ ४७८ ४७९ ४८० ४८१ ४८२ ४८३ ४८४ ४८५ ४८६ ४८७ ४८८ ४८९ ४९० ४९१ ४९२ ४९३ ४९४ ४९५ ४९६ ४९७ ४९८ ४९९ ५०० ५०१ ५०२ ५०३ ५०४ ५०५ ५०६ ५०७ ५०८ ५०९ ५१० ५११ ५१२ ५१३ ५१४ ५१५ ५१६ ५१७ ५१८ ५१९ ५२० ५२१ ५२२ ५२३ ५२४ ५२५ ५२६ ५२७ ५२८ ५२९ ५३० ५३१ ५३२ ५३३ ५३४ ५३५ ५३६ ५३७ ५३८ ५३९ ५४० ५४१ ५४२ ५४३ ५४४ ५४५ ५४६ ५४७ ५४८ ५४९ ५५० ५५१ ५५२ ५५३ ५५४ ५५५ ५५६ ५५७ ५५८ ५५९ ५६० ५६१ ५६२ ५६३ ५६४ ५६५ ५६६ ५६७ ५६८ ५६९ ५७० ५७१ ५७२ ५७३ ५७४ ५७५ ५७६ ५७७ ५७८ ५७९ ५८० ५८१ ५८२ ५८३ ५८४ ५८५ ५८६ ५८७ ५८८ ५८९ ५९० ५९१ ५९२ ५९३ ५९४ ५९५ ५९६ ५९७ ५९८ ५९९ ६०० ६०१ ६०२ ६०३ ६०४ ६०५ ६०६ ६०७ ६०८ ६०९ ६१० ६११ ६१२ ६१३ ६१४ ६१५ ६१६ ६१७ ६१८ ६१९ ६२० ६२१ ६२२ ६२३ ६२४ ६२५ ६२६ ६२७ ६२८ ६२९ ६३० ६३१ ६३२ ६३३ ६३४ ६३५ ६३६ ६३७ ६३८ ६३९ ६४० ६४१ ६४२ ६४३ ६४४ ६४५ ६४६ ६४७ ६४८ ६४९ ६५० ६५१ ६५२ ६५३ ६५४ ६५५ ६५६ ६५७ ६५८ ६५९ ६६० ६६१ ६६२ ६६३ ६६४ ६६५ ६६६ ६६७ ६६८ ६६९ ६७० ६७१ ६७२ ६७३ ६७४ ६७५ ६७६ ६७७ ६७८ ६७९ ६८० ६८१ ६८२ ६८३ ६८४ ६८५ ६८६ ६८७ ६८८ ६८९ ६९० ६९१ ६९२ ६९३ ६९४ ६९५ ६९६ ६९७ ६९८ ६९९ ७०० ७०१ ७०२ ७०३ ७०४ ७०५ ७०६ ७०७ ७०८ ७०९ ७१० ७११ ७१२ ७१३ ७१४ ७१५ ७१६ ७१७ ७१८ ७१९ ७२० ७२१ ७२२ ७२३ ७२४ ७२५ ७२६ ७२७ ७२८ ७२९ ७३० ७३१ ७३२ ७३३ ७३४ ७३५ ७३६ ७३७ ७३८ ७३९ ७४० ७४१ ७४२ ७४३ ७४४ ७४५ ७४६ ७४७ ७४८ ७४९ ७५० ७५१ ७५२ ७५३ ७५४ ७५५ ७५६ ७५७ ७५८ ७५९ ७६० ७६१ ७६२ ७६३ ७६४ ७६५ ७६६ ७६७ ७६८ ७६९ ७७० ७७१ ७७२ ७७३ ७७४ ७७५ ७७६ ७७७ ७७८ ७७९ ७८० ७८१ ७८२ ७८३ ७८४ ७८५ ७८६ ७८७ ७८८ ७८९ ७९० ७९१ ७९२ ७९३ ७९४ ७९५ ७९६ ७९७ ७९८ ७९९ ८०० ८०१ ८०२ ८०३ ८०४ ८०५ ८०६ ८०७ ८०८ ८०९ ८१० ८११ ८१२ ८१३ ८१४ ८१५ ८१६ ८१७ ८१८ ८१९ ८२० ८२१ ८२२ ८२३ ८२४ ८२५ ८२६ ८२७ ८२८ ८२९ ८३० ८३१ ८३२ ८३३ ८३४ ८३५ ८३६ ८३७ ८३८ ८३९ ८४० ८४१ ८४२ ८४३ ८४४ ८४५ ८४६ ८४७ ८४८ ८४९ ८५० ८५१ ८५२ ८५३ ८५४ ८५५ ८५६ ८५७ ८५८ ८५९ ८६० ८६१ ८६२ ८६३ ८६४ ८६५ ८६६ ८६७ ८६८ ८६९ ८७० ८७१ ८७२ ८७३ ८७४ ८७५ ८७६ ८७७ ८७८ ८७९ ८८० ८८१ ८८२ ८८३ ८८४ ८८५ ८८६ ८८७ ८८८ ८८९ ८९० ८९१ ८९२ ८९३ ८९४ ८९५ ८९६ ८९७ ८९८ ८९९ ९०० ९०१ ९०२ ९०३ ९०४ ९०५ ९०६ ९०७ ९०८ ९०९ ९१० ९११ ९१२ ९१३ ९१४ ९१५ ९१६ ९१७ ९१८ ९१९ ९२० ९२१ ९२२ ९२३ ९२४ ९२५ ९२६ ९२७ ९२८ ९२९ ९३० ९३१ ९३२ ९३३ ९३४ ९३५ ९३६ ९३७ ९३८ ९३९ ९४० ९४१ ९४२ ९४३ ९४४ ९४५ ९४६ ९४७ ९४८ ९४९ ९५० ९५१ ९५२ ९५३ ९५४ ९५५ ९५६ ९५७ ९५८ ९५९ ९६० ९६१ ९६२ ९६३ ९६४ ९६५ ९६६ ९६७ ९६८ ९६९ ९७० ९७१ ९७२ ९७३ ९७४ ९७५ ९७६ ९७७ ९७८ ९७९ ९८० ९८१ ९८२ ९८३ ९८४ ९८५ ९८६ ९८७ ९८८ ९८९ ९९० ९९१ ९९२ ९९३ ९९४ ९९५ ९९६ ९९७ ९९८ ९९९ १०००

2. for twenty read one  
3. V. L. twenty  
4. for twenty read one  
5. for twenty read one

and the defendant enjoys possession for that period even though in reality on<sup>1</sup> a fraudulently executed document, then after the lapse of twenty years that document would be (considered to be) without a flaw, and therefore for<sup>2</sup> the purpose of refuting the fault in the document the word twenty has quite a meaning. By an uninterrupted possession for more than twenty years a document would be faultless for more than twenty years or after.

In support of this the Author quotes a text of Kātyāyana: Śaktasya sannidhāvartha iti (p. 19 l. 18) in the presence of one who is competent (p. 44. l. 26). The Author refutes (this) by tadapi na ādhyādiśhwapiti (p. 19. l. 29) *Even that is not so;.....even in the case of pledges &c.* (p. 44. ll. 28-30.) This is the import: The word twenty having (been shown to have) a meaning on account of its capacity<sup>3</sup> to wipe off defects in a document, when it becomes equal even to a document established in law, the exception mentioned above i. e. in the text of the Lord of the Yogis viz. "Except in the case of pledges, boundaries, open deposits, wealth belonging to the dull in intellect, the minor &c." would be contradicted.

It may be said: Indeed by the text "looks on and does not object" a general result having been reached viz. the removal of defects in documents generally in all cases after an uninterrupted possession for twenty years, by the particular text viz. "Pledges, boundaries, open deposits &c." that does not happen in regard to pledges<sup>4</sup> and the like, but even after twenty years defects may be pointed out; thus there is an exception to what has been said before; where is then the contradiction? Anticipating this, the Author says, there is no contradiction in the text of the Lord of the Yogis but that the text of The Lord of the Yogis viz. "pledges, boundaries, open deposits" &c. is contradicted by the two texts of Kātyāyana; and intending<sup>4</sup> to point this out, the Author quotes the text of Kātyāyana: Atha...varshāṇiti (p. 17. l. 30) *If...for twenty years &c.* (p. 44 l. 31). This is what is said. In a document of pledge, as also in a document relating to boundary, after twenty years, no fault could be raised and such a document would be regarded as faultless. Such would be the import of the two texts of Kātyāyana. While contrary to this, under the text of Yogīśwara in the case of a pledge, as also in a boundary

1. for अपरद्वयतलकममिति read अपरद्वयतलेष्वपूर्यमिति.

2. V. L. निराकरणार्थमेव.

3. for भाष्यादिक read भाष्यादि.

4. for अङ्गद्वयेन तदपि read अति तु अङ्गद्वयेन तदपिमिति काल्या &c.

even after twenty years a fault may be pointed out. Thus there would be a contradiction. But this should not be so. In the manner presently to be explained, the solution would be in the contradiction itself, so the Author expounds the meaning intended therein by Uchchyaṭe &c. (p. 20 l. 1) *The answer is* &c. (p. 45 l. 1) *pratyakṣabhogē cha* 5  
*sâkroṣe iti* (p. 20 l. 4) *in possession with notice and protest* (p. 45 ll. 9-10). The context is that the fruits may be followed. The reason here being *abruvata iti vachanâditi* (p. 20 l. 5) *under the text abruvata etc.* (p. 45 l. 10). The meaning is that since the loss of fruit would be of him only who does not protest, therefore, of him who protests i. e. 10  
raises a cry, the fruit would verily be. *Pratyakṣe nirâkroṣe labhate iti* (p. 20 l. 8) *he succeeds when there is possession without protest* (p. 45 ll. 11-12). Even here, the fruit can certainly be followed. Let alone the ownership; still, in the particular matter, the loss of  
\*PAGE 16. fruits becomes inevitable. Anticipating this, the Author 15  
removes it: *Bâdhamapiti* (p. 20 l. 6) *True* (p. 45 l. 15).

To a query, in which case would there be a loss of produce and where could there be no loss of produce, the Author says, where the produce exists, there no loss takes place *tasya swarûpâvinâśeneti* (p. 20 l. 6.) *it.....in the same condition without detriment to its natural state* 20  
&c. (p. 45 ll. 15-16). Of it i. e. the produce. Where, however, the produce has vanished in specie on account of consumption, there being an absence of the substance itself and in specie, even if the ownership which is based on its relation to the substance be lost, by regard to the text "one in possession without a legal origin, he should punish like a 25  
thief", as in the case of property stolen by a thief, the property is restored to the owner and a fine is recovered, similarly the person consuming (the produce) should be made to pay to the owner the produce and be punished; thus by the force of this text, from the payment of the price of produce the loss of the produce as such necessarily would follow, 30  
so the Author says *Yat punastadutpannamityâdînâ* (p. 20 l. 7) *that, moreover, which arises &c.* (p. 45 ll. 17-18.)

### Yâjñavalkya Verse 25.

The Author points out the difference between an open deposit (*upanikṣhepa*) and a deposit (*upanidhik*): *Upanikṣhepo nâmeti* (p. 20 l. 17) *Upanikṣhepa is* &c. (p. 46 l. 20). This is what is (intended to be) said: 35  
what is handed over for protection without disclosing either the form or the quantity is a deposit (*upanidhik*). In the text of Nârada from

the use of the expression 'in confidence,' the non-disclosure of the form and the quantity is inferred. *Hānirna bhavati iti* (p. 20 l. 20) *no loss occurs* &c. (p. 46. l. 26.) &c. i. e. the meaning is that the loss of the produce does not occur.

### Yājñavalkya Verse 26.

*Vivādāspadībhūtam dravyam swāmine dāpayedityanuwāda iti* &c. (p. 20 l. 21). *The amount, the subject of dispute, he should be made to pay to the owner, is an anuwāda* &c. (p. 47 ll. 22-24). The import is that since a rule has already been mentioned viz. "when upon a denial a claim is proved, he shall pay the amount and also an equal amount to the king" *Dandam cha tastamam vivādāspadībhūtadravyasamam rājñe dāpayediti* (p. 20 l. 31)—*as also a fine equal to it i. e. equal to the amount in dispute should he be made to pay to the king* (p. 47. ll. 24-26).

It may be objected: indeed, the rule here is improper, as a rule had already been laid down (before) viz. "and also an equal amount to the king" where, as here, a fine equal to the amount in dispute has been prescribed. To this the answer is that in the text 'and also an equal amount to the king' the rule is applicable only to the recovery of debts, and not to all topics. Even assuming it to have a general application, still there is no injunction in the places where the rule occurs, also an equal amount as to the king being a matter of inference, hence there is no impropriety.

It may again be contended: Indeed the rule of 'an equal amount' is not apposite alike in all kinds of disputes, as in disputes regarding a house or the like, it would be impossible to levy a penalty of another house &c. True, that is so. At such a place the fine 'equal to it' means as is prescribed in each such place to be hereafter mentioned, so the Author says *Yadyapi gr̥hākṣhetrādīṣhwiti* (p. 20. l. 32) *although.....in the case of a house, land &c.* (p. 47. ll. 25-27).

It may then be said, indeed, then in those places to be hereafter stated, this same rule is laid down, so that that other would not have the force of a rule; (to this the answer is) no; in the place hereafter to be mentioned, the rule is as regards the nature of the punishment, while here the rule is as to the payment to be enforced in accordance with the fine already incurred; so, as there is room for a (distinct) rule at both places, neither is without (the force of) a rule.

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It may be said, indeed, how has the expression *Dhik* (sic or shame!) been proved to be a (kind of) punishment, and even if it be

proved to be a punishment, whence is the rule regarding that (as a punishment) been obtained? So the Author quotes the text of Manu as an authority for both: *Dhigdandam prathamam kuryāditi* (p. 21 l. 6): *He should punish first with the expression dhik* (lie or shame) &c. (p. 48. ll. 13, 14). Here the words 'first, then, thirdly' and the like mentioned one after the other are indicative of a higher form relatively by regard to those mentioned before from among the forms of punishment viz. *Dhik*, a fine (in money), or a corporal punishment, and not as prescribing a procedure in all offences in the order mentioned viz. first &c. *Navadhā darśita iti*, i. e. *indicated to be nine-fold* i. e. in nine varieties i. e. of nine kinds exclusive of the capital punishment which is well known. *Daśa sthānāni daṇḍasyeti* (p. 21. l. 8). *ten places for punishment* &c. (p. 48. l. 19). In the case of three *varṇas* (orders) i. e. the Kshatriya, Vaiśya and Śūdra, those places (which are intended for (inflicting) punishment, are ten. This is the construction. *Bheṣhām cha yannimittamiti* (p. 21 l. 10). *Of these, moreover, by means of* PAGE 17. *which* &c. (p. 48. l. 24). Of these i. e. from among the belly &c. It has been said that a poor man should be punished by *dhik*. The Author mentions an alternative in the same case. *Karma cha kārayitavya ityādinā* (p. 21 l. 11) *or be made to serve on labour* &c. (p. 48 l. 25). as says Gautama:<sup>1</sup> *Karmavivoga* (l. 24) *preventing the deed* &c. (p. 48 l. 30).<sup>2</sup> In the case of a Brāhmaṇa not behaving, i. e. who acts against the law, prevention of the deed, proclaiming the crime &c. should be resorted to.

### Yājñavalkya Verse 27.

While mentioning possession of a particular kind as evidence of ownership, the Author points out the preponderance of title as being a cause creating ownership: *Swatvavetuh pratigrahakrayāditi* (p. 21 l. 5) *the origin of ownership such as gift, purchase* &c. (p. 49 l. 25). The Author mentions the reason of the relative preponderance of title over possession: *Swatvabodhane bhogasyeti* (p. 21. l. 5) *of possession as index of ownership* (p. 49. l. 27). The meaning is this: Possession as evidence of ownership requires however, gift and the<sup>2</sup> like; while gift

1. Ch. XXII 43-44 Ch. Manu VIII 125,

2. There is a mistake in the printing of the text here. The 26th verse does not end, as shown in the print, at ll. 1-2 on page 17 but it continues in the next line as far as the word *प्रतिग्रह* after which word begins Verse 27

3. 2. as the origin of title like *अपत्य* and the or, inheritance, purchase partition and finding see *Mitākshara* Gautama.

and the like, do not require possession. Thus, under the maxim, 'of things dependant and not dependant, those not dependant have greater weight,' that which is based on gift and the like preponderates. Vichhedâparavojzita iti (p. 21 l. 22) *uninterrupted, without protest* (p. 50 l. 5) Aparavaḥ (*protest*) i. e. clamour. Without interruption or protest i. e. without break or protest. This is what is (*intended to be*) said: without interruption i. e. unbroken; without a protest i. e. without a hue and cry.

10 The Author now begins to explain the meaning of the parts of the same text quoted before: Kwachittuâgamanirapekṣhasyâpitl (p. 21 l. 33) *sometime, however,.....does not depend upon title* (p. 50 l. 10). sa punarâgamâdabhyadhika iti (p. 22 l. 1) *such possession.....even superior to title &c.* (p. 50 ll. 16-17) 'such' is to be understood to be that descending in a line of posterity.

15 It has been said that (possession) as evidence (of ownership) is independent of title. What sort of independence is that? Anticipating this (question) the Author explains that the independence is of the *knowledge* of the title and not of its *existence*, and so he says tatrâpyâgamañânânanirapekṣha iti (p. 22 l. 2) *even then it is independant of the knowledge of title* (p. 50 l. 18). This is what is (*meant to be*) said: one asserting that there is title expects the actual existence of the title; he does not expect to have the knowledge of the title as 'here is the title' in the manner' as cattle is shown by the horn. It may be asked, what is the evidence for the actual existence  
20 where it is neglected? So the Author says sattâ tu tenaiveti (p. 22 l. 2) *the existence of title however.....from that itself* (p. 50 l. 19). From that itself i. e. from the particular (kind of) possession itself.

25 Indeed this is untenable, there will then be the fault<sup>1</sup> of An Objection, mutual dependance. Because, the existence of title is ascertained by possession which has an evidentiary character; while possession accompanied by title is regarded as evidence after the existence of the title is ascertained.

30 To this the answer is. The ascertainment of title is The Answer. (only) by an inference, as a long-continued possession was not available; and it is after the ascertainment of  
35

1. The युगवाहिकान्वाय see note 4 p. 17 above.

2. व्यस्योन्माध्यमवादः as where things are mentioned as the cause and the effect of each other mutually, thus leading to no conclusion as to which is the cause and which the effect, the above पारस्परिकवैयर्थ्यादयमन्वयः of also दोषोपपत्तिरसंभवात्

title that possession is regarded as evidence. The fault of mutual dependence would occur only where the existence of title is determined by regard to actual possession as a means of evidence.

Then if it be asked, what of the statement<sup>1</sup> viz. "the existence of title, however, is deducible from that itself" ? (the answer is) as the ascertainment of title is made by an inference through it, it is to be understood that the use of the expression 'from that itself' is figurative. 5

In the text<sup>2</sup> viz. 'title is superior to possession' two kinds of possession (are to be accepted) as evidence of possession in the view of Yogīśwara possession both within memory and immemorial possession. The Author expounds these two separately : Vinā pūrvakramādityetachchetyādīnā (p. 22 l. 3) with the expression *excepting where.....descended from a line of ancestors* (p. 44 ll. 24-25). This is what is (intended to be) said : Immemorial possession does not depend upon the cognition of title ; while possession within memory is dependent on the cognition of title. 15  
Whence do you get this dependence in one place and independence in another of the one fact of possession on title? Anticipating this question, the Author mentions a reason for its dependence : Atascha smarāṇa-yogyē kāle iti (p. 22 l. 4) Hence also in the case of possession within memory &c. (p. 50 l. 23). In the case of possession within memory, even when gift, purchase, and the like sources of title exist, and are capable of being evidence, there is an absence of the determination of title as it is not (regarded as) evidence ; and an absence having been established, mere possession even by force not being regarded as evidence it depends upon title. 20 25

The Author now mentions the reason<sup>1</sup> or regarding in some places possession as independent of the cognition of title : Asmārte tu Kāla III. (l. 5) In the case of immemorial possession however &c. (p. 50 l. 27) When there is capacity and (still) want of perception it is *yogyānupalabdih* (i. e. the non-existence of the proper means of the knowledge of title). In the case of time within memory, gift, and the like are inadmissible as evidence and there is an absence of the capacity of perception. Therefore it is not possible to decide that there is no title, owing to the absence of the capacity of perception for assessing the means of evidence determining an absence (of title). Thus also possession is not evidence merely when there is a determination of the absence of title, because, the basis itself is loose. In the present case<sup>2</sup>, however, there being an absence of 30 35

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1. See Mitākṣharā Text p. 22 l. 2, Eng. M. p. 50 l. 19.

2. Yaśa. II. 27.

determination as to the absence of title, there is the absence of the looseness of the basis, and possession which is independent of the cognition of title is evidence of title. This is the meaning:

Smārte kâle kriyetti (p. 22 l. 6) In cases within the memory  
 5 of man.....evidence &c. (p. 50 l. 27). *Kriyā* (evidence) i. e. means  
 of evidence. All roots indicating motion also indicate knowledge.  
 The root *gama* indicating motion is used to indicate knowledge.  
 Therefore following (*Anugama*) means certain knowledge. Absence  
 of it means absence of ascertaining it. Whence is such an absence?  
 10 Anticipating the question, and with a view to satisfy the expecta-  
 tion, viz. that the absence of a positive certainty as to the non-  
 existence of title was due to the non-existence of proper means  
 of the knowledge of title, the Author explains the expression;  
 'absence of knowledge' in the text of *Kâtyâyana*; *Anugamâbhâvāditi*  
 15 (p. 22 l. 8) on account of the absence of proof &c. (p. 50 l. 38). *Yogyeti*  
 (l. 8) proper &c. Since, even if there be a continued immemorial  
 possession, it is no proof, and hence *Manu*<sup>1</sup> has generally laid down  
 a punishment for possession without title, so the Author says *Ata eva*  
*Anâgamamtuṭi* (p. 22 l. 11) Hence.....he who.....without title &c.  
 20 (p. 51 ll. 9-10).

It may be said: In the passage 'even.....for many hundred years,' the word even (*Api*) is used in the sense of collection. For according to the *Sūtra*<sup>6</sup> on prepositions "the word *Api* is used to indicate possibility, returning<sup>7</sup> or secession, expectation, collection, censure, blessing, competency or force, ornament and query". Therefore the following meaning is obtained. He who enjoys possession extending over many years is to be punished. Since a collection can occur only in an enjoyment for several years by one and more than one, not otherwise. Thus the singleness of the person in possession is inferable from the word *Api*; as also from the singular number indicated in the word *he*. Therefore, if the rule be that one in possession for a long time without a title is to be punished; only one is punishable and not many. And in the case of possession in an unbroken line of ancestors, the persons in possession being many, and there being the absence of such a one in possession the punishment as for a thief can only be for the first person

1. This passage is not found in manu : but it is in the Nārada Smṛiti. 1. 82.

2. The Sūtra in Pāṇini at I. IV. 96 is अविः पदार्थसंज्ञायाश्च वर्णसंज्ञायाश्च पदार्थसंज्ञायाश्च. The sūtra as given in the text above is different.

3. I. e. as opposed पश्चि.

has been stated that whatever has been held in possession even though unlawfully by the father as also held by the three ancestors, in both these cases a restitution cannot take place, a good title may be inferred even for possession for a period within memory, although not initiated by a good title. So the Author refutes it : *Yadapyanyāyenāpi yadbhuktam iti* (p. 18 l. 30). As to *what has been said 'where possession has been held even though unlawfully' &c.* (p. 52. ll. 9-10). Here the expression 'even though unlawfully' demonstrates the evidentiary value of possession without title. 'By the father' has a reference to immemorial time ; (so) possession commencing at a time within memory and having no good origin has no value as a title. So he

PAGE 19\* answers by *Pitrā sahetl* (p. 22 l. 17) *with the father &c.*

Here the clause, 'what has been held in possession by the father'—is not to be taken separately because by so doing possession by the father being at a time within memory such possession without a lawful origin may be regarded as good title. Whereas, the instrumental here in the expression 'by the father' is used in the sense<sup>1</sup> of accompaniment. Therefore the text viz. where possession of a field or the like is held by the three ancestors along with him without interruption it cannot be taken away from him, being in one entire sentence, and it being impossible to find possession by many persons without the same being for a long time, possession for an immemorial time has the force of title. Therefore there can be no evidentiary force in possession without a lawful origin and within memory.

It may perhaps be said, how do you get at possession at a time beyond memory from the expressions 'three ancestors', or 'possession by many persons' so the Author says *tatrāpi kramāditi* (p. 22 l. 18) *even there through.....successive &c.* (p. 52 l. 12).

It may be said: Indeed let possession for a period beyond memory be evidence (of title); even that requires the existence of title. What then of the text<sup>2</sup> "even though unlawfully &c." ? so the Author says: *Annyāyenāpi yadbhuktamityetachhetl* (p. 22 l. 20) *and moreover the text when possession has been held even though unlawfully &c.* (p. 52 ll. 22-24).

Again it may be said, indeed it has been stated that possession for a period beyond memory does not require the knowledge of the origin of title, but that it requires the existence of it; that is inconsistent.

1. Cf. *सहस्रकेन्द्रवर्ति दृष्टीया* २।२।११.

2. *Nārada I. 91.*

The Author anticipates an objection, that in the text "*what has been held in enjoyment in continuation by three ancestors without any title &c.*" (p. 52 ll. 27-29), the expression 'in continuation' is used to indicate the force of possession as a source independently of title, so he says: *Yachchoktam*<sup>1</sup> *yadvinâgamamityâdinâ* (p. 22 l. 22) '*as to what has been said, what.....without title &c.*' (p. 52 ll. 27-30). The Author refutes by *Tachchâpyattantamiti* (p. 22 l. 23) *even that without any title whatever &c.* (p. 52 l. 31).

This is the meaning: In the case of possession beyond memory there being absolutely no necessity of the knowledge<sup>2</sup> of the origin of title, even when the knowledge of the (origin of) title is entirely absent, a thing which is possessed for a period beyond memory cannot be taken away. But only so much; and not that even when in reality no title exists in fact, there could be ownership, for thereby there would be a contradiction with what has been stated before. Here the Author states the reason: *Âgamswarûpâbhâva iti* (p. 22 l. 22) *if title itself is not available* (p. 52 ll. 33-34). The context is to be supplied by "since<sup>3</sup> here". *Etaduktârthamiti* (p. 22 l. 25) *The import of (this) has been explained* (p. 52 ll. 34-35). i. e. the meaning is that it has been explained as an implication<sup>4</sup> for immemorial time.

It has been said that possession for a period beyond memory not being dependent for a knowledge of (the origin of) title, is evidence (of title), while that within memory may be admitted as evidence (of title), but with the knowledge of the origin of title. Then it would be improper to maintain that (possession) within memory is evidence of title, as that depends upon the knowledge of the (origin of) title. So the Author says *Nanu smaraṇayogya iti* (p. 23 l. 25), *it may be said.....within the memory of man &c.* (p. 52 l. 37). The Author examines the same by *tathâhiti* (l. 26.) *For &c.* (p. 52 l. 38). Is the title on which possession depends reached by another means of proof or no; and what will become when it exists in one? Anticipating this the Author mentions a defect in the first by *Yadyâgama iti*<sup>5</sup> (l. 26) *if title &c.* (l. 38.) The meaning is thus: When ownership is ascertained by another means of proof alone, possession not being of any use in

1. This word is from the *Mitaksbarâ* and should have been in bold types in text here

2. On p 19, l 12 for आगमस्यास्यातकालीनोपभोगपक्षा etc read आगमशानस्यास्मार्तभोगे अदक्षो etc.

3. for अविद्यत read अत्र यत्.

4. V. L. अस्मार्तकालोपलक्षक &c.

5. for यद्यागम read यद्यागम.

the knowledge either of ownership or<sup>1</sup> of title (and thus) in the case of ownership or title ascertained by another means of proof, possession not being acceptable as a means of proof as it is not capable<sup>2</sup> of creating proof, it is not possible to say that possession which depends upon  
 5 title is a means of proof. The Author states a fault even in regard to the second<sup>3</sup> Atheti (l. 27) and if &c. (to p. 53 l. 2.) The meaning is that there is no speciality, as (the origin of) title is not ascertained. The Author refutes by Uchchyata ityādinā (p. 22 l. 27) by, the answer is &c. (p. 53 l. 4). This is what is (intended to be) said : Title is  
 10 ascertained only by other means of proof. Such specific possession the title of which is so ascertained becomes a source of title later on in another period of time of gift &c. It may again be said, indeed it has been stated that such a title alone establishes ownership, what then (is the use) of such possession? So the Author says Avagatopyāgama  
 15 ityādinā (p. 22 l. 28) a title though proved &c. (p. 53 l. 6).

### Yājñavalkya Verse 27. (2)

Vāchikastu Mamedamiti (p. 23 l. 3) the vāchika however is—with the words 'it has become mine' (p. 53, ll. 24-25) i. e. the meaning is with a verbal acknowledgment where an objective recognition takes place in  
 20 the words 'this is mine' Tatra nityamaṣṣ smaryate iti (p. 23 l. 4.) In this respect a rule has been laid down (p. 53 l. 29). 'In this respect' i. e. in the case of a physical acceptance. Anumantrayet prāṇyabhimṛśediti (p. 23 l. 6.) "The consent of sentient beings should be obtained; non-sentient beings and a maid should be touched (p. 53 ll. 32-33). The meaning of this : If the thing which is the subject matter of the gift  
 25 be a sentient being and has the capacity to speak, then the donee should obtain his consent by the words 'you, such and such a one, are mine.' He too should say 'I am thin.' If the object of acceptance be a non-sentient being, i. e. incapable of understanding the words addressed, such as, a cow and the like, or even among sentient beings  
 30 a maiden, both these the acceptor should gently touch. Tatsahitādāgamāditi (p. 23 l. 9) such a title, with that &c. (p. 54. l. 8) i. e. by relation to a title with physical acceptance.

1. for आगमज्ञाने वाङ् (in 20 p. 19) read आगमज्ञाने वाङ् &c.

2. In l. 21 for आगमपक्षेण read आगमे वा.

3. The second alternative i. e. possession is not title.



It may be said, that as title without possession is weaker than title with possession, where a field is mortgaged to one and (afterwards) is also mortgaged to another, then if by chance the first be without possession, and the latter has possession, even in such a case title without possession may be regarded as weaker, and in that case there would be a contradiction with the text<sup>2</sup> 'In the case of a pledge, a gift and a sale &c.' Anticipating this, the Author refutes it : Etachcha dwayorityādīnā (p. 23. l. 10) *this however when.....of the two &c. (p. 54 l. 9)* The Author expounds the text<sup>3</sup> "Title is superior to possession &c." by another method. Athavetyādīnā (l. 11) *or again &c. (p. 54 l. 13)*. Eteṣhām samavāye iti (l. 12). *where all these exist together &c. (l. 14)*. 'Of those' i. e. of witnesses &c. ; co-existence, collection ; i. e. when all exist. Pūrvakramādbhogādvineti (l. 14) *unless there is possession which had come down from a successive line of ancestors &c. p. 54 ll. 20-21* ; the meaning is that title is superior to possession other than the possession which has come down in a successive line of descent.

The Author points out the potency at times of the possession handed down from (successive) lines of ancestors, (even) against title : Sa punariti (l. 24) *such, moreover &c. (p. 54 l. 22.)*

The Author explains the purport of the second half of the text viz. "In a title also there would be no force" &c. Madhyame tu bhogarāhitāditi (p. 23 l. 15) *while in the case of the intermediate possession without possession &c. (p. 54 ll. 24-26)*. Kāraṇam bhuktīrevaḥketi (l. 17) *possession is itself the origin (l. 29)*. This has a reference to the fourth generation.

### Yājñavalkya Verse 28.

The Author proceeds to expound the law as to fine: Āgamastu kṛto - yeneti (l. 21) *He who made the acquisition &c. (l. 37)*.

It may be said, this is not proper, as in this text there is an absence of the rule as to the exposition of fine. The Answer is, No, it is not so. The first man should set forth (the sources of title as) acceptance by gift or the like only. The second may set up a particular possession viz; without a break, without protest and with the knowledge (of the offence). The third may set up possession handed down from ancestors

1. for भोगसहितपदस्य read भोगरहितपदस्य

2. Yājñ II 23,

3. Yājñ. II. 27.

- even without the special characteristic of its being in the presence &c. This being the rule in case of a conflict, the rule as to punishment in case of a breach of the above rule follows from the very force of words and so the discussion as to the rule of punishment follows as of course; thus
- 5 everything is unexceptionable. Bhogyahānistayorapitl (1. 31) but even these lose the thing possessed &c. (p. 55 l. 24).

### Yājñavalkya Verse 29.

- 10 Navârûdhavivâdasvyeti (p. 24 l. 7) while a suit was filed against him &c. (p. 56 l. 1). The meaning of this: By the son i. e. the relative of a deceased litigant against whom a suit had been filed. 'That point' i. e. the point under dispute. 'Having proved' i. e. by proof of title. That point, possession will not establish i. e. refute i. e. in such a case possession does not serve as a means of proof.

### Yājñavalkya Verse 30.

- 15 Vyawahartarl' prete vyvahâro na nivartata itl (p. 24 l. 9) if a litigant dies the suit does not stop &c. (p. 56 ll. 4-5). 'does not stop. i. e. does not fall through; indeed it proceeds on. This is the meaning' Yathâ hedâbukâdinâmitl &c. (p. 24 l. 17) e. g. of the dealers in cattle &c. (p. 56 l. 21.) Persons who, moving from place to place sell horses
- 20 are Hedabukas. This is a well-known word in Gujerath. Gaṇâschâdhikrîtâ itl (p. 24 l. 24) gana is an officer appointed by the king (p. 57 l. 1) Gandhî<sup>2</sup> i. e. Pûgdhî. Sottarasabhyeneti (p. 24 l. 25.) and his councillors (p. 57 l. 7.) i. e. in an assembly with additional members.

### Yājñavalkya Verse 32

- 25 The Author explains the passage 'entered into by one who has no connection' by implying 'one not appointed' Aniyuktâsambaddhakṛtepitl' (p. 25 l. 11.) entered into by one having no connection or by one who was not appointed as an agent (p. 58 ll. 13-14) i. e. no connection on account of his not having been appointed an agent. The meaning

1. There is a mistake in the print. This portion which has been put as under verse 29, should have been under verse 30, as now put in the translation.  
2. These terms may be rendered as "societys" or "Associations".  
3. for अनियुक्तान्तरकृते इति read अनियुक्तान्तरकृतीत्येति,

Bhūryā pītāmahopāttetyādīvachanāditi (p. 25 l. 17). Under the text 'land which was acquired by the grand-father, &c. (p. 58. l. 30.) i. e. the text': "Land which was acquired by the grand-father, a corrody, and also chattels; in these the ownership of the father and  
5 also of the son is the same". Sampratirodhaka iti (l. 20) while under restraint &c. (p. 59 l. 3). Sampratirodhaka-imprisonment in a fort etc. by the enemy forces after the entire property is taken away. Nākāmo dātumaṣṭhati (l. 20) is not liable to return if unwilling (l. 59 l. 1) i. e. in the circumstances mentioned above if he be unwilling i. e.  
10 not willing to return the woman's property taken he need not give.

Caṇḍadravyam haretyastu samvijam langhayechcha ya iti (l. 29) he who robs the wealth of villagers or transgresses any established usage &c. (p. 59 ll. 21-22) 'the king should deprive such a one of all his effects and banish him from his realm' is the next half. Ekam  
15 ghnatam bahūnām chedityādi (l. 29) when one is assaulted by many &c. (p. 69 l. 2?) 'the fine shall be double of that already mentioned' is the remaining text.<sup>3</sup> Vyawahāra iṣhyata eveti iti. (l. 30) a suit...appears to have been verily ordained &c. (p. 59, l. 23). For one depriving the gṛā of its property, the punishment is the deprivation of the entire possessions.  
20 Also for many attacking a single individual, the punishment is a double penalty. Both these, from the point of view of a judicial proceeding, are for those who are guilty of the aforesaid offences and thus a cause of action for a judicial proceeding exists.

The Author explains the import of the text of Nārada: "between  
25 one and many etc."

Bhinnārthairbahubhiriti (l. 30). When many have different causes of action (p. 57, l. 25). The meaning is that one having different causes of action against many cannot include these in one suit, but that these are tried in successive order. The Author concludes iti yojaniyamiti  
30 (l. 33) the text should be construed to mean &c. (p. 59 l. 32). This is the purport: A transaction between an intoxicated person and the like is absolutely inadmissible, while one between a preceptor and the pupil and the like will lie i. e. a in a particular manner e. g. as aforesaid.

### Yājñavalkya Verse 33.

35 Yadi na bhāvayati tadā tatsamam dandya iti (p. 26 l. 5) if he does not identify, then he should be fined in an equal amount &c. (p. 60,

1. Yājñ. II. 121.

2. Yājñ. II. 187.

3. Yājñ. II. 221.

4. Nārada Introduction 12.

1. 12). The meaning is that having first asserted (in the complaint) that 'it is mine, if afterwards he does not prove it, he should be punished.

It may be said, indeed wealth lost and recovered being another's must be returned, therefore, the rule that 'lost wealth recovered should be given &c.' is meaningless; so the Author says *Adhigamasya swatwa-* 5  
*nlmittatwāditi* (p. 26 l. 6.) *on account of 'finding' being recognised as one*  
*of the causes giving rise to ownership &c.* (p. 60 ll. 14, 15.) *Atra Kālāwadhiṃ*  
*wakṣhyatīti* (1. 7.) *Here the Author lays down the period of time &c.*  
(p. 60 l. 16.) Here the rule (laid down) is that at the time of restoring 10  
the property lost and recovered, one-fourth of the royal share should  
be given to the finder. When however an officer of Revenue or Police  
finds lost property and hands it over to the King, to such a Revenue  
or Police officer, a fourth of the one-sixth which belongs to the  
King as his should be given i. e. from the one-sixth of the property 15  
recovered and not from the royal share. If it were so, the text viz.  
'may take one-sixth share of the property &c.' may stand contradicted.

This is the import: *Urdhwamadhigantuschaturthoṃśo rājñāḥ*  
*śeṣham* (p. 26 l. 17.) *afterwards one-fourth to the finder, the remainder to*  
*the King &c.* (p. 61 l. 5) i. e. *after a year*; whether the owner turns up or 20  
does not return a fourth share should be given over to the finder.  
The remainder goes to the King. There, in apportioning the fourth  
to the finder this is the difference: if the owner turns up as has been  
mentioned before, the sixth for the King should be taken out, and from  
the remaining portion should be taken the fourth part as  
\* PAGE 22. the Royal share. If, however, the owner does not turn 25  
up, a fourth of the entire property. Thus the difference  
here too (should be noted) as before. In the clause 'the remainder to  
the King' also this is the special rule: When the owner comes, then  
in accordance with what has been stated before, here too, the sixth and  
other parts are for the King. If, however, the owner does not 30  
turn up, then from the entire property, a fourth having been given to  
the finder, the King should take the residue. Thus should be construed  
the text of Gautama

In the term 'a year' in the text of Gautama the singular number is  
not intended, so the Author says *Atra samvatsaramityekawachanamlll* 35  
(p. 26 ll. 9, 17.) *Here, by the word 'a year' the singular number is in-*  
*tended* (p. 61 l. 6.) Also in the text 'within a year', by a parity of  
reasoning, the singular number not being intended, the Author expounds  
the fourth quarter thereof according to the sense intended Harata

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4. Nārada Introduction. 12.

announcement or does not cause it to be made, but if the king comes to be informed, as the result of a report given by others then that (finder) should be made to pay it, as also a fine equal to a half.

### Yājñavalkya Verse 36.

It has been stated that if the property is not restored to one 5  
who has been robbed of his wealth by robbers, the sin of both of these  
viz. of him to whom the wealth belonged as also of the thief, accrues to  
the king. The Author points this out by a detailed analysis *Yadi*  
*chorahastādādāyetyādīnā* (p. 27. l. 14.) *If after recovering from the*  
*possession of the thieves &c.* (p. 65. l. 1.) *Yathāsthānam gamayatīti* 10  
(p. 27. l. 16.) *he shall return it to the owner &c.* (p. 63. l. 7.) i. e. he  
shall make it over to him whose property it was. This is the meaning.

Here end the Special Rules of Procedure

or

Here end the General and *Special Rules* of Procedure. 15

## Chapter III.

### RECOVERY OF DEBTS.

The Author indicates the connection in the context of the former and  
the later portion of the treatise by *Sādhāraṇāsādhāraṇarūpāmītyādīnā*  
(p. 27. l. 20.) *In the form of the general and particular &c.* (p. 64. l. 3.). 20

This is the import : In the first chapter the General Rules of  
Procedure have been stated. In the second chapter have been stated  
the Special Rules of Procedure. Thus the two chapters are of use for  
the ensuing portion of the treatise, and thus their connection. Or, the  
preceding chapter itself consists of general and special Rules for the 25  
rule in the texts<sup>1</sup> such as "who shifts from place to place &c." (indicat-  
ing) the characteristics of a faulty (witness or litigant) is general for all,  
as also in the text "After discarding all circumvention &c." The rest  
is particular. Thus with its two-fold character, the preceding chapter

1. Yājñ. II. 13.

parato nṛpa ityetaḍapīti (p. 26. l. 18.). And even the text 'thereafter the king shall take it' (p. 61 l. 8.).

- Rājā swāṁśamavatīrya tatsamaṁ dadyāditi (l. 19.) the King should deduct his due and pay an equivalent &c. (p. 61 l. 11.)
- 5 His due i. e. the sixth part, having taken (this) away, 'an equivalent'—i. e. as much as was received from the hands of the finder—of that amount the king should give to the owners. There also, he should not pay the interest accruing on it, but the original only, the rule having been laid down, "thereafter the king shall take it".
- 10 This is the import in short.

- This equivalence is by regard to the money in his own treasury and not by including the fourth awardable to the finder, as that is awarded to him as his wages. If the amount of wages is not paid, after the lapse of time, restitution of lost property recovered may not
- 15 take place and moreover as particularly it has been mentioned "after taking out his own &c.".

### Yājñavalkya Verses 34 & 35.

- Nidhyadhigamo rājadhanamiti &c. (p. 27. l. 1.) A Treasure-trove is the property of the king &c. (p. 62. l. 7.). The meaning of this : Treasure-trove i. e. the finding of a deposit. By this finding is indicated wealth. That wealth is of the king, not of the finder. In the case of a Brāhmaṇa learned i. e. accomplished by the study of the Vedas, the treasure-trove is not the king's wealth, but of himself only. If the announcer i. e. the reporter of the treasure-trove be one not a Brāhmaṇa i. e. other than a
- 20 Brāhmaṇa, then the person announcing the treasure-trove found gets himself a sixth part; so hold some. The expression 'so hold some' is used to indicate the other alternative rule viz: that a treasure-trove is not the king's wealth, but only subject to a deduction of a sixth portion, along with the one which allows him to take the entirety.

- It may be said, indeed, it is not proper to say "if the information is not given and he is found out, the finder should be made to pay a fine" because, the non-knowledge of the king may (happen to) be due to the non-information by the finder of the deposit or by any other, so the Author says : Anivedita iti kartari niṣṭhā (p. 27. l. 2.). The
- 35 past participle 'anivedita', is used in the active sense (p. 62. l. 11.) The import is this: If the finder does not become himself the maker of the

announcement or does not cause it to be made, but if the king comes to be informed, as the result of a report given by others then that (finder) should be made to pay it, as also a fine equal to a half.

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is particular. Thus with its two-fold character, the preceding chapter

1. Yājñ. II. 13.



itself has a connection with what is to follow. Thus it is with this very object that the last chapter has been concluded in the end as having these both.

Idṛśaṃ ṛṇaṃ deyamityādi (p. 27. l. 23.) *the kind of debt which should be paid &c.* (p. 64. l. 11.) A debt for (the purpose of) preserving the family incurred even by persons who are not independent must be paid ; otherwise than the above, however, may not be paid. It must be paid by such as the son, grandson and the like, who are liable. When the debtor is a Brāhmaṇa with exhausted means, he should be made to pay by degrees, at instalments, at the cry of an instalment. Sometimes it must be paid with interest. In other places it may be paid without interest. By such a mode it should be paid. Thus in this order Recovery of debts is of seven kinds, five in reference to the debtor and two for the creditor. This is the meaning.

Ṛṇaṃ deyamadeyamiti (p. 27 l. 25.) *which debt must be paid, and which may not be paid &c.* (p. 64. l. 15.). The connecting order is 'where' a particular debt should be paid and where not. 'By whom' indicates those who are liable ; 'when,' (is indicative) of time, 'in what way' of the mode. Having thus demonstrated in accordance with another Smṛti the seven-fold character of the (chapter of) Recovery of debts the Author introduces the passage in the original text tatra prathamamiti (p. 27. l. 26.) *there—the first &c.* (p. 64. l. 20).

### Yājñavalkya Verse 37.

Māsi māsityeveti (p. 28. l. 4.) *every month &c.* (p. 65. l. 1.) 'Every month' is repeated (for all). So that every month it becomes two, three, four, and five respectively. The word 'two, three, four, and five' has a *kan* ending, so the Author says Tadasmihvṛdhyāyeti (p. 28. l. 6.) *the affixes mentioned above have the sense of interest &c.* (p. 65. ll. 45.) The Author describes the nature of the interest mentioned above Iyancha vṛddhirityādīnā<sup>1</sup> (p. 28. l. 9.) *this interest &c.* (p. 65. l. 10.) Kāyāvirodhini śāsavaditi (p. 28. l. 12.) *payable constantly and without detriment to the physical health &c.* (pp. 5. l. 20. p. 61. l. 1.) 'Constantly' i. e. often and often. i. e. every day.

# Yājñavalkya Verse 38.

Same wā Brāhmanādayodhamṛṇa iti (p. 28. l. 20.) or all Brāhmanas and other debtors &c (p. 66. l. 21.) Here the mention of Brāhmanas and the like as debtors, and of the Kshatriyas and the rest as creditors is merely by way of example<sup>1</sup>. The meaning is that irrespective of the higher or lower order one may figure as a debtor or a creditor even in an inverse<sup>2</sup> order.

Na vṛddhiḥ prītidattānām syādanākāritā kwachiditi (p. 28. l. 22.) Unless there be an agreement to that effect no interest shall ever be charged on friendly loans &c. (p. 66. ll. 25, 26.) The creditor invests at interest with a debtor allowing interest to increase, thus the causal having been formed, the word *Kāritā* in the past<sup>3</sup> passive participle form is the result. That too has an ञ (ā) as a prefix. That which has not been agreed to is not agreed i. e. not stipulated. In transactions where no interest is stipulated e. g. where an advance has been made with the words 'you may do as you please' there never will be any interest. Even in such a case, after half<sup>4</sup> a year i. e. after six months even if no agreement has been made, the amount begins to carry interest. This is the meaning of this passage.

The mode of increase, moreover, should be observed in accordance with what has been stated before according as it is secured or unsecured by a pledge. Yastu Yāchitakamiti (p. 28. l. 23.) He, however, who after taking a loan for use &c. (p. 66. ll. 28, 29.) What is obtained by a request is a *yāchitaka* (a thing borrowed for use), as says Amara.<sup>5</sup> Kṛtwoddhāramadatwā ya iti (p. 28. l. 26.) He who after obtaining a loan without returning &c. (p. 66. ll. 29, 30) the meaning is that after obtaining a *Yāchitaka* loan. It has been pointed out before that in a friendly loan, after the expiry of a period exceeding half of a year, interest, even if not stipulated, begins to accrue. An exception to that has been stated by Nārada, so the Author says : Anākāritavṛddherapa-wāda iti (p. 28. l. 29.) an exception to the (rule as to) unstipulated interest &c. (p. 67. l. 10.)

1. वृत्तव्याप्त—by way of illustrating the proposition laid down.

2. i. e. there may be a debtor from a higher order and a creditor from a lower one

3. i. e. the causal is indicated by क् and the past passive participle is then formed. Read l. 24 as क्त्वा कृतवन्तश्च कृतवन्तश्च

4. i. e. as for instance for six months.

If when a thing was deposited after exhibition of its form or quantity with a man in whom one had confidence, and in the presence of the owner says, 'I shall do business with this,

\* PAGE 24. and after a time shall repay you a thing of this kind and quantity' and the owner also agrees to it, in the case of

such a deposit, no interest runs if not stipulated. This is the meaning. It having been established that at a mere deposit interest does not arise, and also that if any transaction is entered into without an intimation to the owner, it is to be returned together with interest.

'A gift without' consideration' e. g. gifts to minstrels, bards &c. 'A gambling debt' i. e. what was won by gambling. 'Commodity' i. e. a saleable article. The meaning and import is, that in transactions other than a deposit, where an oral agreement has been made with the words 'I shall pay' (in the case of) the price of a commodity and the like, the acceptance of these i. e. the price of a commodity and the like being as for another to that extent, is an exception to the rule where interest accrues even when not stipulated.

### Yājñavalkya Verse 39.

Paśūnām strīṇām santatireveti (p. 29. l. 3.) of the females and of beasts progeny alone etc. (p. 67. l. 20.) 'of females' i. e. of the female slaves and not of the ladies of a family. Kīyati parā vṛddhiriti (p. 27. l. 5) what is the maximum limit for the accumulation &c. (p. 67. l. 25). i. e. what is the highest extent of the increase by interest.

Etachcha sakṛtprayoge sakṛdudâharaṇe cheti (p. 29. l. 17.) This moreover . . . in the case of one transaction and one payment &c. (p. 68 l. 25-26) i. e. in one transaction of an advance of a debt, once only recovering the amount with interest.

This is the import: In one transaction of a loan, when ten rupees are advanced and interest not having been recovered every month or every year in course of time an over-increase occurs in the interest, then a creditor recovering the original amount advanced together with interest, shall take together with the original, its double i. e. an amount limited by twenty rupees. If the same amount (thus) doubled remaining with the one to whom it was advanced, as e. i. rupees ten

is advanced to him again as in the first transaction, or is advanced to another man, then it should not be supposed that because it had doubled itself in the past advance, it will not increase in the present transaction as the increase contemplated is only of the amount then advanced. Hence, an increase in two-fold and the like does not take place in the original transaction only; but it should be remembered that in the second and subsequent transactions even the double is surpassed. 5

Adhamarṇadeyasya dwaiguṇyâsambhavâditi (p. 29. l. 20.) and it is not possible that the amount payable by the debtor might become two-fold &c. (p. 68. ll. 31-32). The impossibility of becoming two fold may be seen as follows: Every month, or every year, on whichever day the interest is paid, there is a break in the increase which had accumulated before that date, and a fresh increase occurs. Thus in reality a fresh transaction takes place, as there is no case here of an advance allowed to increase without a break until it becomes two-fold. 10 15

Sakṛdâṛṇte tu pâthe śanalīḥ śanalīriti (p. 29. l. 24.) where the reading is 'recovered once'...by instalments &c. (p. 69. ll. 7-8.) If interest recovered once, together with the original amount, is received only once, then it does not exceed the two-fold. Otherwise, when received by instalments it verily exceeds the double. This is the meaning. 20

Chirasthâne dwaiguṇyaṁ prayogasyeti (p. 29. l. 26.) if in a transaction the loan remains outstanding for a long time &c. (p. 69. ll. 10-11.) Sthântam means standing. If a transaction of an advance of a loan continues to be stationary owing to the absence of an acceptance of interest every month it becomes doubled. 25

### Yājñavalkya Verses 40-41.

Apratipannaṁ sâdhayaṁ rājñâ nivâraṇiya iti (p. 30. l. 6.) He should be prevented by the king from recovering a debt which has not been acknowledged &c. (p. 90. ll. 10, 11.). 'Not acknowledged' i. e. admitted. 'Recovering' i. e. taking back. Pratyudâharṇaṁ boddhawyamiti (p. 30. l. 12.) should be regarded as a counter-illustration &c. (p. 70. l. 23.) 30

This is the meaning: By the text 'if one injured by others in a way which is a violation of the (laws of) Smṛti and usage, informs the king' 35

that becomes a (fit) subject for a Judicial Proceeding" this is what is (intended to be) said: If one attacked in a manner opposed to the way laid down by the Smṛtis or usage complains to the king, that is a cause of action : This is what has been (intended to be) said by the text "if the debtor complain to the king while the debt is being recovered" : One must not complain to the king, if it be unopposed to the ways of the Smṛtis or usage ; if he informs, that information will not become a subject for a judicial proceeding. Hence also a penalty has been laid down in *Dāṇḍo dāpyaścha taddhanamiti* (II. 40) *he should be fined and made to pay the loan &c.* (p. 69. l. 22). i. e. this is a counter-illustration to that. The meaning is that the king should recover from the debtor in the form of a fine.

\* PAGE 25

### Yājñavalkya Verse 42.

It may be said that here any recovery in the form of a fine is improper, for by the text of the Lord of the yogis 'a debtor should be compelled by the king to pay', what is indicated is the recovery of only a tenth portion from the debtor, and a fifth part from the creditor.

The answer is no, not so. Indeed recovery is indicated; there is no dispute. What then is the object ? The answer is when a visible<sup>1</sup> cause is possible, an invisible one must not be imagined, as the assumption of an invisible when a visible one exists is opposed to rules. Now the visible object is the guilt of the debtor in not paying what was acknowledged, while there is no fault whatever of the creditor, but only inability (to recover). Therefore it is that a penalty from the debtor and costs from the creditor (has been laid down) respectively for guilt and inability ; and thus everything is unexceptionable.

It may be asked, indeed, in the case of an amount acknowledged by the defendant, the mode of recovery as well as the assortment of the fine has been indicated by the text<sup>2</sup> "trying to recover an acknowledged debt." What, however, is the mode of recovery or the rule as to the assortment of fine when the defendant does not acknowledge the amount ? so the Author says *Apratipannârthasâdhane twiti* (p. 30. l. 25.) *where the debt is not acknowledged &c.* (p. 71. ll. 2.)

### Yājñavalkya Verse 43.

Karmaṇāpi samam Kuryāditi (p. 31 l. 5.) *Even by personal labour shall the debtor make good &c.* (p. 72 l. 12.) The order of words is this: whether of an equal or lower caste the debtor shall make good to his creditor even by personal labour; if, however, of a higher caste, he should pay the amount gradually. Of this very verse the Author states the purport: Uttamaṇṇena samamiti (p. 31. l. 5.) *even with the creditor &c.* 5

### Yājñavalkya Verses 45-46.

Avibhaktatṛbhubbhīḥ Kuṣumbāṛthamiti (p. 31 l. 15.) *for family purposes by the many undivided &c.* (p. 73 ll. 12.) Here has been mentioned the debt which must be paid viz. the debt which was (incurred) by many or by each one for family purposes. 'The head of the family should pay' (p. 73. l. 4.) by this is indicated (the one) who is liable. Tasmin prete proṣhite weti (p. 31. l. 16.) *when he is dead or has gone abroad* (p. 73. l. 5.); by this is indicated the time. Tadrikthina (l. 11) *his co-parceners* (p. 73 l. 6.); here also is the mention of persons liable. 10 15

Yena deyamityatra pratyudāharaṇamiti (p. 31. l. 16.) *a counter-illustration to the rule as to by whom &c.* (p. 73. l. 7.) In this text of the Lord of the Yogis viz. "A debt which has been incurred for family purposes by the undivided members" has been expounded the point 'by whom' viz. the debt should be i. e. paid by the members of the family &c. who are liable. There even among the members who are liable in particular matters, a debt need not be paid by women &c., and thus the liability to pay as stated before stands countered; so this is a counter-illustration. This is the meaning. 20 25

### Yājñavalkya Verse 47.

Tasya purastādapavādamāhetī (p. 37. l. 24.) *He mentions an exception before mentioning the rule &c.* (p. 73. l. 24.) The meaning is that although the text "by sons and grandsons" occurs in the order of the statement after the text<sup>1</sup> 'contracted for the purposes of spirituous liquor, lust or gambling' still by regard to the sense it must be placed before. This is the meaning. 30

The Author mentions the invalidity of the gift made to rogues' bards, wrestlers &c. by Dhūrte bandhai malle cheti (p. 31. l. 28.) to rogues, bards, wrestlers &c. (p. 73. l. 33.). Its invalidity is on the strength of the text "bears no fruit," and not because of the absence of a visible result. Madyaśulkaadyūtakāmadandāniti<sup>1</sup> (p. 32 l. 3) for spirituous liquor, or a śulka or in gambling or for amorous pleasures as also a fine &c (p. 74. ll. 12-13). Here by the expressions 'spirituous liquor,' 'a śulka,' or 'a fine,' are indicated amounts spent on these purposes respectively. The connection is that these i. e. the spirituous liquor &c. should not involve sons. The meaning and purport has been made clear in the text itself.

### Yājñavalkya Verse 49.

Mumūrṣhuṇā pravatsyatā weti (p. 32. l. 15) who was dying or was proceeding on a journey &c (p. 75. l. 6.). What has been acknowledged i. e. admitted by a wife who was charged by her husband who was dying or 'proceeding on a journey' i. e. intending to go to another country, such a debt must be paid. This is the meaning.

It may be said: Indeed when under the text<sup>2</sup> 'A wife, a son' &c. it is demonstrated that a wife is without property, how even under a hundred texts such as "a debt agreed to should be paid by a woman" and the like enjoining a wife to pay, can it be paid by a wife if she is moneyless? So the Author says: Nachūnena vachanena stryādīnāmīti (p. 32. l. 20) likewise the text referred to above ... of women and others &c. (p. 75. ll. 20, 21.)

### Yājñavalkya Verse 50.

Paugandāścheti śabdyata iti (p. 33. l. 5) is called a Pauganda &c. (p. 33. l. 31.) 'Pauganda' is another name for a boy. Swatantraḥ pitarāvṛta iti (p. 33. l. 5.) is independent in the absence of parents (p. 76. l. 32.) 'In the absence of parents' i. e. when there are no parents, he becomes independent even after sixteen years.

It may be said, the rule that in the absence of parents, the independence comes after sixteen years is improper; as, even before sixteen

1. for मद्यशुल्कयुतकाद्वान् read मद्यशुल्कयुतकामद्वान्.

2. Manu Ch. VIII 416.

years if there be the death of the parents independence is attained and then even by one who has not reached the age of majority, a debt may become due payable; so the Author says; *Yadyapi pitṛmaraṇādurdhwa-mitti* (l. 5). *although after the death of the parents &c.* (p. 76. l. 33.) *Aprāptavyawahāraścheti* (p. 33. l. 8.) *has not attained (the age of)* 5  
*majority &c.* (p. 76. l. 35.) If one has not attained the age of majority on account of his not being of sixteen years, even if he be independent he does not become answerable for a debt; this is the meaning.

Since thus one who has not attained the age of majority does not become amenable for a debt, therefore the text next to be quoted should be thus expounded, so the Author says, *Tasmādataḥ putreṇa jāteneti* (l. 9.) *therefore by every son born &c.* (p. 77. l. 8.). Not that by every son, by merely his being born must a father be delivered from a debt, but by a son who has reached majority by reason of his having reached the sixteenth year, should a father be redeemed from a debt. 10  
This is the meaning. 15

*Na brahmābhivṛyāhārayediti* (p. 33. l. 11) *one must not make him recite Vedic texts &c.* (p. 77. l. 13.) The meaning of this: 'Brahma' i. e. the Veda, 'must not be made to recite' i. e. must not cause (to be taught) by another. Where i. e. in which *Śrāddha* (with) the utterance of *swadhā* an offering is made is 'an offering' 20  
by *swadhā* i. e. *srāddha*. Elsewhere than that i. e. anywhere excepting the *srāddha*, he must not be made to recite.

This is what is intended to be stated.: At a *srāddha* the recital of the Veda should be caused, if one himself be uninitiated, as one who has been initiated has the right to recite himself. 25  
Thus even in the case of one who is a minor has in his capacity as the offerer the right, upon the strength of the consciousness of the capacity of one causing it i. e. the recital. Or 'Brahma', means 'Veda'; another i. e. the head priest or the like, who has the right to cause (the recital.) should not allow an uninitiated boy to 30  
repeat i. e. he should not engage a boy to pronounce the veda elsewhere than in the offering of the *swadhā*.

*Sambhūyasamutthāneneti* (l. 13) *Living jointly in a body &c.* (p. 77 l. 17.) i. e. all together without the allocation of shares. It has been stated, when undivided they should pay off the debt jointly in a 35  
body. The Author states the purport of this by *Guṇapradhānabhāveneti*



(1. 13.) according to qualifications &c. (p. 77 l. 17.) Pradhânabhûto (1. 13.) the manager (1. 18) i. e. the head should pay; this is the meaning.

Ata Urdhwam pituḥ putrâ iti (1. 14.) therefore when the father is dead, the sons &c. (p. 77 l. 19.). Since a debt must be paid off by the sons and grandsons, therefore after the death of the father the sons divided or undivided should pay. The Author mentions the mode of payment of debt by the undivided sons Yastam wadwahate dhuram (1. 15) one who holds the lead (in the family) &c. (p. 17 l. 21.) The purport is that among the undivided he who bears the yoke i. e. the burden of the family should pay. Here in the expression 'or that', the word 'or' is used in the sense of 'only'.

The Author states the mode of the payment of a debt by the undivided : Yathâmsata iti (1. 15) according to their respective shares &c. (p. 77 l. 16.) Atra cha yadyapiti (1. 15) here moreover, although &c. (1. 21). Here i. e. in the text 'the debt should be paid by the sons and grandsons'. Atra vibhâvitamiti aviseshopâdânâ-miti (1. 18) Here from the general use of the term proved &c. (p. 77 ll. 29-30). Here from the use of the term 'proved' generally in the text of Brhaspati, and in the text of the Lord of the Yogis &c. "the debt should be paid by the sons and grandsons, when established by witnesses in the case of a dispute" the expression 'established by witnesses' is indicative of some evidence ; and, therefore, the meaning is that a debt established by any means of proof must be paid off by the sons and the rest. Thus, therefore, the purport is that there is no conflict between the texts of the Lord of the Yogis and Brhaspati.

### Yājñavalkya Verse 51.

Rṣâpâkaraṇe ṣṇi tatputra iti (p. 33. l. 21.) In the discharge of a debt, the debtor his son &c. (p. 78. l. 1.) 'Debtor' i. e. one taking a loan,

It may be said : Indeed it is sufficient (to mention.) 'the heir who takes the heritage', (and) 'the heir who takes the women' need not be mentioned, as his women are part of his heritage (as they are) in the form of his property. So the Author says : Yoṣhito vibhâjyadrawyatweneti (p. 33. l. 29.) as the woman is indivisible property &c. (p. 78. l. 27.) This is the meaning: Even though a woman is (regarded as)

property, still that cannot be designated as heritage, for among the people, the term heritage (*rāṭha*) is employed only in regard to property which is capable of a division, while a woman is incapable of a division.

Anticipating an inquiry as to when 'these' i. e. the heir taking the heritage and others co exist i. e. happen to be together, in which order are they to be made to pay the debt, the Author states that they should be made to pay in the very order in the text viz. "The heir who takes the heritage should be made to pay the debt &c." so he says *Eteṣhām samavāya iti* (p. 34. 1. 1.) *when these co-exist &c.* (p. 78. 1. 27.) When there is co-existence of the heir taking the heritage and others then (alone) can there be the thought about the order. But that co-existence itself cannot be. Anticipating this, the Author says, *Naau eteṣhām iti* (l. 2.) *Indeed of these &c.* (p. 78. 1. 31.) The Author demonstrates the very absence of co-existence : *Na bhrātaro na pitara iti* (p. 34. 1. 2.) *not brothers nor the paternal ascendants &c.* (p. 78. 1. 32.) as Manu<sup>1</sup> has demonstrated that "Not brothers, nor the paternal ascendants are entitled to take the heritage, but the sons alone are entitled to take the heritage of the father". The meaning is that while the son is living, it being impossible for any other to take the heritage there cannot be co-existence of a taker of a heritage and a son.

It may be said, indeed, let there not be a co-existence of the taker of heritage and a son, (but) the taker of a woman and of the taker of the heritage may exist together : Anticipating this the Author maintains that as there cannot also be a taker of the woman, and so a co-existence of these is not possible, so the Author says, *Yōṣhidgrāhepi nopapadyata iti* (p. 34. 1. 30.) *it is also not possible to find one 'who takes a wife'* (p. 78. 1. 35). Here the reason is *na dwitīyāṣcheti* (l. 3.) *nor is a second &c* (p. 78. 1. 36.) The meaning is that there cannot be a second husband ; there cannot be one to take a woman.

In the text "the son, when the parental estate has not gone to another," it has been stated that the son should be made to pay the debt. Even this direction is profitless, so the Author says *Tadṛṇaṃ putro dāpya iti* (p. 34. 1. 4.) *that debt the son should be made to pay &c.* (p. 78. 1. 37.) There the reason is *putrapautrairīti* (l. 4.) *by sons and grandsons &c.* (p. 78. 1. 38). The meaning is, that this same sense having been propounded in (the text) "the debt should be paid by sons

and grandsons," it is tautologous, and its repetition is improper. In the passage "the son when the parental estate has not gone to another" the adjectival clause 'when the parental estate has not gone to another' has been used; that also is meaningless; so the Author says

5 *Ananyāśṛtadrawya iti* (l. 5.) *when the parental estate has not gone to another* (p. 79. l. 1.) There the Author explains the theory *putre satit* (l. 5) *when the son exists* (p. 79. l. 3). The meaning is that when the son is existing, parental wealth not devolving on any other, the qualifying clause for a son viz. when the estate has not gone to another, is useless.

10 The Author points out a fault: even assuming that the property goes to another even when the son exists *Sambhave Cheti* (l. 6.) *even if it were possible &c.* (p. 79 l. 3.) This is the import: When even when the son is living, the devolution of the heritage to another becomes possible, the sons should not be made to pay. But when the estate has not gone

15 to another, the son takes the heritage himself and then the son should be made to pay the debt; and then the adjectival clause 'when the estate has not gone to another' intended to convey this meaning, comes to be with a purpose. This is the point in this view.

20 Then it would come to be said that the cause of the obligation for the payment of debt is the taking of the heritage and not sonship. Thus this import comes to be established: He who takes the heritage, should be compelled to pay the debt. This import having come to be expressed by the text "He who takes the heritage must pay the debt", a statement again in the text viz. "a son, when

25 the estate has not gone to another" is improper and so the Author states an objection to the fourth quarter of the original text *Putrahīnasya ṛkthina ityedapit* (l. 6.) *of a sonless man those who take the heritage even thus &c.* (p. 79 l. 5.).

30 The Author expounds the import of the objection. *Putre satyapit* (p. 34. l. 1) *even when the son exists &c* (p. 79 l. 7). Therefore even while the son is existing, one who takes the assets has to pay the debts, how much more then when the son does not exist must one who takes the heritage pay the debts. Thus when by the *a fortiori* reasoning itself this has become

35 apparent from its very meaning, this direction is meaningless. Anticipating such an objection, the Author refutes it: *Atrochyate ityādinā* (l. 8) *to this the answer is &c.* (p. 79. l. 9.) what has been said, in the objection that it is impossible for another to take the heritage when a

son exists, the Author says *putre satyapī anyo ṛkthagrāhi sambhavatī-  
tyādinā* (l. 8.) *it is possible that another may take the  
inheritance even when the son exists &c.* (p. 79 l. 9.) The  
Author mentions a reason for the non devolution of  
heritage on the impotent sons and the like : *Tathā cha Kūbādinanu-  
kramyati* (l. 9) *moreover commencing (in order) with the impotent and  
others &c.* (p. 79. l. 13).

The Author mentions the possibility of one taking a wife :  
*Yośhidgrāho yadyapīti* (p. 34 l. 12). *although ... for one to take the wife  
&c.* (p. 79. l. 20). This is the import : Owing to the prohibition in the  
*Śāstra* of another husband, although there cannot be a second husband  
for women according to the *Śāstra*, still it<sup>1</sup> being possible for one  
infringing the *Śāstra* to take a wife (of another), such a one is liable to  
discharge the debt of her husband.

Let such a one be possible who by taking another's wife infringes  
the *Sāstras*, still according to the characteristics given in another *Smṛti*,  
there being many varieties of these, and there being no<sup>2</sup> specific rule,  
is it that all persons taking a wife are liable to pay the debt ? Antici-  
pating such a question the Author states a rule *Yaśchataṣṭānāmīti* (l. 13)  
*of the four kinds &c.* (p. 79 l. 23). The four-fold division of *Swairiṇi* and  
the three-fold division of *Punarbhū*s (has been laid down). Among these  
only the first and the last kinds of men taking another's wife are liable  
for the payment of debt.

All this the Author demonstrates by means of the texts  
of *Nārada*: *Yathāha Nāradaḥ Parapūrvāḥ strīya ityādinā* (l. 14) *as says  
Nārada...wives...who had previously belonged to another...&c.* (p. 79 l. 25)  
of those who had another husband ; of such kind. *Devarādinapāsyeti*<sup>3</sup>  
(l. 21) *leaving aside her brothers-in-law and others &c.* (p. 80 l. 9) i. e.  
leaving aside her brothers-in-law and other nearer relations who were  
eligible for the *levirate*. *Prāptā deśādīti* (l. 22) *having come from a  
(foreign) country &c.* (p. 80 l. 11). The meaning of this : One who  
having come from a foreign country i. e. another region and has been  
purchased with money, such a woman ; or being oppressed by hunger  
and thirst has betaken herself saying 'I am thine', such a one has been  
mentioned as the fourth (Kind of) *Swairiṇi*. *Antimā Swairiṇīnāmīti*

1 For तथा शास्त्रविधिः &c. read तथापि &c.

2 For ... द्रविष्यते read ... द्रविष्येत् in l. 6. p. 28.

3 This should have been in bold type in the text, as it is from the *Mitāksharā*.

- (1. 33). *the last of the swairiṇis &c.* (p. 80 l. 14) i. e. one who is the last among the *swairiṇis*, as also one who is (mentioned) first among the *Punarbhūṣ*. One to whom these two resort, that one should discharge the debt contracted by their husbands. This is the construction. *Rṇaṇi wodhuḥ sa bhajata iti* (1. 27) *he shall have to pay the debt of her husband &c.* *Wodhuḥ* (p. 08 l. 24) i. e. of the husband.

- In the text "The son, when the parental estate has not gone to another" the mention of the son<sup>1</sup> is with a view to demonstrate that in the absence of the one who takes the heritage and the one who takes the wife the debt should be paid by the son, and in this order, and not with the object of indicating the liability of the son in the matter of discharging a debt; for, thereby there would be (the fault of) tautology, so the Author says, *Putrasya Punarwachanamiti* (1. 29). *moreover, the repetition of the word putra &c.* (p. 80 l. 6).

- Again the qualifying expression "when the parental estate has not gone to another" is significant; so the Author says: *Ananyāśritadrawya* III (1. 29). By the expression 'when the estate has not gone to another, it is intended to lay down that for discharging a father's debts a blind or a deaf or the like son is not liable, and so the expression 'if the estate has not gone to another' has a significance.

- This is what is (intended to be) said: The blind, the deaf, and the like are those (in whose case) the paternal estate goes to another, as owing to the defect of blindness and the like they are unfit to take a share in the paternal heritage, while sons not<sup>2</sup> blind and the like are those (in whose case) the paternal estate has not gone to another, as they are capable of taking a share in the heritage; therefore the blind sons and the like, because the paternal estate has gone to another, are not liable to pay the father's debt; while those who are not affected by the defect of blindness or the like are liable for discharging the paternal debt, and so the qualifying clause 'when the paternal estate has not gone to another' has a significance.

- The Author states the meaning of the expression "of a sonless man, those who take the heritage" as is consistent with what has been established, *Putrabhinasya rikthina ityetaḍapatti* (p. 34 l. 30), *the expression "of a sonless man, those who take the heritage" &c.* (p. 80 l. 3). In

1 For पुत्रपदस्य रिक्तयोर्विद्वाद्द्वयोरभावे read पुत्रपदस्य रिक्तयोर्विद्वाद्द्वयोरभावे &c.

2 On p. 28 in l. 20 add after यथावा the following: अथवा पुत्रा अनन्याश्रितपदवा अभाविद्वयपदित्वेनाप्यपदयोर्भावात् &c.

the absence of a son and a grandson, a great-grandson also, if he takes the heritage, (then) he is liable to discharge the debt of the great-grandfather; otherwise, in the absence of succession to the heritage, a great-grandson is not liable. This is the meaning.

The meaning in substance is that by demonstrating the liability of the great-grandson taking the heritage to pay the debts, the expression 'of a sonless man, those who take the heritage' has been with a purpose. 5

The Author now begins to expound the expression "of a sonless man, those who take the heritage" by another method: *Yadwā Yoshidgrāhābhāva* III (p. 35 l. 1) or, *failing him who takes the wife etc.* (p. 81. l. 28). This is the meaning: In the absence of one taking the heritage, one taking the wife should be made to pay the debts; in his absence, the son, when the estate has not gone to another, should be made to pay; thus has been stated in the text ending with "or, the son when the estate has not gone to another". Now it is being stated that in the absence of a son, the one taking the wife must be made to pay the debt: *Putrahinasya rikthina ityaneneti* (p. 35 l. 3.) in the passage 'of a sonless man, he who takes the heritage' &c., (p. 81 l. 5). According to this view the term *rikthinaḥ* is in the ablative case, so that the meaning is that the debt should be caused to be paid from the heir. Indeed here the text is 'the heirs of the sonless' and not 'one who takes the wife of a sonless man', therefore how of this interpretation viz that in the absence of a son one who takes the wife should be made to pay? So the Author says *Rikthaśabdena Yoshideveti* (l. 3). by the word *riktha* wife alone &c. (p. 81 l. 6.) *Sa tasya barate dhanamiti cheti* (l. 4). *he...takes his wealth &c.* (p. 81 l. 7). Here by saying that he who takes one's wife also takes his wealth, no rule has been laid down. But, it means, that since wives themselves are wealth therefore one who takes the wives gets the designation<sup>1</sup> of the taker of wealth. This is the meaning. 10 15 20 25 30

*Iti parasparaviruddhamiti* (l. 5) are mutually contradictory &c. (p. 81. l. 12). Here how many kinds of contradictions (are

\*PAGE 29 there)? For, one (rule as to the) order regarding payment is that in the absence of one who takes the wife, the debt should be discharged by the son, under the texts "as also he who takes the wife" and ending with "the son, where the estate has not gone to another." While by the text "of a sonless man &c.," in the absence of the son, one who takes the wife must pay the debt, and 35

thus the order of payment appears to be reverse of the one mentioned above. Thus this mutual contradiction as to the order (of payment) is one case of contradiction. When the taker of the wife and the son both exist, then when both are existing, the liability as to the payment of debts having been indicated by regard to the absence, (of either), in the absence of this element indicating the liability, the position would be that he has to pay the debt and thus there neither would be contradiction of the texts laying down the necessity of paying debts such as the text "When, however, there are neither sakulyas, nor relatives, nor the kindred then it should be paid to the twice-born. On failure of these, it should be caste into the waters" and like others. Thus this is another contradiction. Both these (contradictions) are indicated by the expressions "mutually contradictory" and "when both exist"

The Author refutes the objection stated before by Naiṣha doṣha itī (l. 5.). *there is no fault here &c.* (p. 81 l. 13). There are many (kinds of) takers of wives. Among these are two categories: One who takes the last *swairiṇi*, one taking the first *punarbhū*, and one taking a wife endowed with a rich heritage; this is one category; and another category is of one taking the wife of one devoid of issue or wealth; in such a state, in the absence of the taker of a wife of the first category, the son is made to pay the debt, under the text "the son, when the estate has not gone to another" so the Author says, *Antimaswarīṇigrāhina itī* (l. 6) *those who take the last swairiṇi &c.* (p. 81 l. 14).

By the text "of a sonless man, those who take the heritage" it has been laid down that in the absence of the son any one or the next in order i. e. one of the wife-takers shall be made to pay the debt, so the Author says *Putrābhāveti nirdhana itī* (l. 7). *in the absence of a son... having no property &c.* (p. 81 ll. 1576). This is what is (intended to be) said: It is not a general rule stated that in the absence of one who takes the wife the son must be made to pay, or in the absence of the son, the one who takes the wife must be compelled to pay, by which there will be a contradiction. But among the wife-takers, in the absence of a wife-taker of the kind referred to in the two categories, the son must be made to pay, and in his absence, the specially designated wife-taker as stated above must pay. Thus by a resort to a middle category between the two, there is no contradiction either in regard to the order (of liability to pay), nor will there be any opposition with the context of

texts laying down the payment of a debt as an obligatory duty, since what is necessary may be paid<sup>1</sup> by still another, and so there is no contradiction of any kind. Thus apart from the commentary given above the following is established as the meaning of the text "of a sonless man, those who take the heritage". viz. in the absence of one who takes the wife, the son (must pay) the debt, and in the absence of him, the wife-taker must be compelled.

Now the Author cites in support, the text of Nārada: *Etadevoktamit-yādineti* (l. 7) *this very thing has been said &c.* (p. 81 l. 17). The Author expounds the text of Nārada *Dhanastrihari &c.* by *Dhanastrihāri-putrāṇaṃ samawāya iti* (l. 8) *of the three i. e. he who takes the wealth as well as he who takes the wife and (lastly) the son &c.* (p. 81 ll. 17-18.)

The Author begins to give another exposition of the text *Putra-līnasya rikthinaḥ* *Putrahīnasya rikthina ityasya anyā vyākhyeti* (l. 13). the clause "of a sonless man those who take the heritage (should be made to pay the debts)" has another explanation. With a view to state that very exposition, the Author states something which appears from the meaning itself by way of a supplementary<sup>2</sup> anticipation *Etana strihāri putra iti* (l. 13) *by this...those...who take the wife...another son &c.* (p. 81 l. 34.) This is the meaning: Persons taking the estate or the wife, and sons mentioned in the texts commencing with "the heir who takes the heritage should be made to pay the debt" and ending with "the son when the parental estate has not gone to another" should be compelled to pay the debt. For whom should they be compelled to pay the debt? to such a question, (the answer is), for the creditor. When he is not existing, for his son, or for his grandson. This is the conclusion following from the very context.

Having thus mentioned the conclusion following from the context, the Author now brings in the part 'of a sonless man the heirs taking the estate, &c.', by *Putrādyabhāva iti* (l. 14) *in the absence of the son and the rest &c.* (l. 36). In this view *rikthinaḥ* is (to be taken) in the genitive case. Intending to expound this very meaning, the Author says *Putrādyanwayahīnasyeti* (l. 15) *of one who has no son or other issue &c.* (p. 82 l. 3). For him i. e. the cognate or other relation to whom the inheritance belongs, the takers of the wife and others mentioned before should be made to pay the debt. This is the meaning.

1 In l. 17 for अत्रद्वयमन्यतरैश्च read अत्रद्वयमन्यतरैश्च.

2 अत्राह one of the three terms without which the idea intended to be conveyed will not be complete, the other two are योग्यता and सक्ति.



Brāhmaṇasya tū yaddeyamiti (1. 16). *whatever debt is due to a Brāhmaṇa &c.* (p. 82 l. 8). A debt which is payable to a Brāhmaṇa having issue, when the Brāhmaṇa is not existing, should be made over to his agnatic<sup>1</sup> relations, in their absence, to the cognate kindred; this is the order of construction. *Sakulyāḥ*, agnatic relations i. e. belonging to the same *gotra* (or gens) are *sapindas*; *Bandhavaḥ*<sup>2</sup> cognate kindred—not belonging to the same gens—are *sapindas* or kindred.

In answer to an inquiry, in the absence of sons and other issue and in the absence of kindred entitled to take the heritage, for whose behalf should these aforesaid persons be compelled to pay the debt, the Author again also points out the text of Nārada, *Yadā tu na sakulyāḥ syuriti* (1. 18.) *when, however, there are neither sakulyas &c.* (p. 82 l. 87.)

The two texts of Nārada have thus to be adjusted.

In support of the rule stated in the texts commencing<sup>3</sup> with “these i. e. the takers of wealth or of the wife and the sons” and ending with “in their absence his sons and the rest &c.” the Author cites the text of Nārada viz. the first half of the verse “whatever debt, however, is due to a Brāhmaṇa &c.” *Brāhmaṇasya twiti* (1. 16).

In support of the rule brought out by the texts commencing with “in the absence of sons &c. to whom should they be made to pay” and ending with “to his heirs must (these) be compelled to pay”, the Author strengthens the conclusion by means of a verse and a half by the method of agreement and difference by the text *Nirwāpet tatsakulyeṣhuityādīnā* (1. 17.) *should be paid to his sakulyas &c.* (p. 82. l. 7.); there he should make it over; this is the construction, since it has been stated by the affirmative method viz. in the absence of the issue, it should be made over to his sakulyas. ‘When, however, there are neither *sakulyas*’ is by the method of difference, since, by stating that in the absence of the

1 The *Sakulya* is used in reference to those cognates or *Sapindas* who belong to the same *gotra*.

2 *Sapindas* are those cognates who possess in their bodies *pindas* or particles in common with the propositus. They may belong to the same family or *gotra* as that of the propositus e. g. a son's son, or to a different family e. g. a daughter's son; see Yājñ. I. 52 and the *Mitākṣhara* thereon and the note on *Sapinda* in Appendix B to Gharapure's *Hindu Law*.

3 i. e. at p. 35 ll 13-15 of the *Mitākṣhara*.

*sakulyas*, it should be paid to the twice-born, when the *sakulyas* are existing the payment of the debt to the twice-born and the rest has been negatived, and thus what has been stated before has been negatived.

### Yājñavalkya Verse 52

Adhunâ Puruṣhaviśeṣha itl (p. 35 l. 20). now ... .. from 5  
particular persons &c. (p. 82 l. 16.) By the last exposition of the text  
"of a sonless man, those who take the heritage" this is the conclusion  
established: Of a creditor who is without a son or other issue, he who is  
an heir i. e. the kindred and the rest, to such a one, these mentioned 10  
above should be compelled to pay the debt. By this, in accordance  
with the rule 'one should accept' the heritage as well as the debt and  
none else' for any particular person who is incapable of taking the herit-  
age, the taking up of a debt also necessarily stands prohibited. From  
this conclusion, on the occasion of prohibiting the recovery of a debt  
for particular persons, the Author mentions other prohibitions also. 15  
This is the meaning.

Apl tu Pratiṣiddham Sâdhâraṇadhanatwâditl (l. 14.) nay it has 15  
been even prohibited as there is the community of wealth &c. (p. 82.  
ll. 21-22.) Those who had the commonly acquired wealth i. e. the  
brothers &c. The state of these; that condition and the like of 20  
these. Thus is the (solution of that) compound.

It has been stated that before partition there cannot be a  
surety liability between a couple excepting by mutual consent.  
The Author anticipates an objection to this *Nanu dampatyoritl*.  
(l. 29.) it may be said.....between the couple &c. (p. 82 ll. 30-31.) 25  
The reason for this: *Tayorvibhâgâbhâvenetl* (l. 29.) as there is  
no partition between them &c. (l. 32.) The meaning is that as there  
is no partition, the word 'partition' in the expression 'before partition'  
is useless and the qualification is meaningless. The Author  
refutes by admitting (as to) the half, *Satyamityâdinâ* (l. 30.) true &c. 30  
(l. 35.) Thus, on the strength of the rule as to the joint right regard-  
ing the rites in connection with the preparation of the *Śrauta* and  
*Smārta* fires, the Author states the conclusion established from the  
context: *Ataścheti* (p. 36 l. 4) therefore &c. (p. 83 l. 17.)  
A *Pārta* is an act which consists of digging &c. says the *Amara*°. 35

1 V. L. १३३११—The person taking the heritage should alone be amenable for the debt.  
2 II. 7-28.

The Author states the same thing regarding the results of meritorious acts : Tathā puṇyānām iti (1. 36). moreover.....of meritorious &c. (p. 83. l. 21.) Divijyotiriti (1. 5) body in the heaven &c. (p. 83. l. 22) The meaning of this: In the heaven i. e. in the heavenly region  
 5 Imperishable i. e. not perishable until the exhaustion of the meritorious act which<sup>1</sup> is the cause of it. Jyotiḥ i. e. begin a body resplendent<sup>2</sup> with lustre; the Author brings out this meaning as the crux. Yeṣhu puṇyakarmasviti (1. 16.) in reference to those meritorious acts &c. (p. 83. l. 24.) As on the authority of the rule as to this joint right in  
 10 the consecration of fire there<sup>3</sup> is their jointness in the (enjoyment of) heaven and the like results proceeding from the fire consecrated thereby, and also an absence of separation<sup>4</sup>, so even as to jointness of property, on the authority of injunctive texts maintaining their jointness, their jointness being established, the couple have a joint right  
 15 in regard to the sons &c. resulting from wealth. And as the ownership of wealth being of both together, wealth also would be indivisible. Therefore what has been said even regarding wealth in the case of a couple before partition, that there cannot be suretyship or the like before partition, all that is irrelevant as before on account of the meaningless qualification.

Anticipating such an objection the Author says : Nanu drawya-  
 25 swāmītwepi sahatwamuktam iti (p. 36. l. 81.) It may be said that the jointness has been laid down even in connection with the ownership over wealth &c. (p. 83. ll. 26-27.) The Author points out a text indicating even ownership over wealth to be together. Drawya-  
 30 parigraheṣhu Cheti (1. 8.) also with respect to the acquisition of property &c. (p. 83. l. 28.) The following is the meaning of this text of Āpastamba<sup>5</sup> as intended by the objector. From the acceptance of the hand follows the jointness. The jointness of the couple is also as regards the acceptance as to the earning of wealth. The Author demonstrates this : Na hi Bharturiti (1. 8.) not.....during her husband's &c. (p. 83. l. 30.) When the husband is on a journey abroad, they do not characterise that as a gift by the wife on a special occasion<sup>6</sup>. The meaning is that their jointness having been ordained even as to the  
 35 ownership of wealth, there is no separation as to wealth as (there

1 In p. 33. ll. 19-20 for कारणभूतं सकृत्तयाश्रयितमपि नपर read कारणभूतसकृत्तयाश्रयितमपि नपर

2 There is a mistake in the print. It should not be तेजः प्रदानं but तेजःप्रदानं

3 In l. 21 for सहाधिकारविबलात्साध्यादि &c read सहाधिकारविबलात्साध्याभ्यादि :

4 For विभागाभावात्तर्हि read विभागाभावात् तर्हि.

5 V. L. आनीमतीर्षः

6 V. L. एव प्रत्यक्षान्वयेति &c.

is none) in the acts to be accomplished by the Śrauta and Smṛta fires.

PAGE 31\* This text ordains only an ownership of wealth. There is no mention of jointness, by which an absence of partition could be inferred. Thus by the method of admitting<sup>1</sup> a half, the Author refutes it: Satyam dravyaswāmītvam ityādīnā<sup>2</sup> (l. 9.) *true, ownership.....over wealth &c.* (p. 83. l. 30.)

The following is the meaning, in accordance with the established conclusion, of the text 'And with respect to the ownership of property': The couple has a joint right even as regards the acquisition of wealth. This jointness, however, is ancillary, not principal. For, as in the case of the consecration or the like, in the absence of either the husband or the wife, the very nature of the consecration remains unaccomplished, such is not the case regarding the acquisition of wealth. But the husband is the acquirer, and the wife preserves what is acquired, and thus the acquisition and preservation are done by both, and thus on account of the co-operation of both, there is jointness also. Thus where there is jointness<sup>3</sup> viz. in consecration and the like there is ownership also. And, thus where there is jointness there being ownership, here also, there being jointness in the acceptance of property there is ownership.

The Author states this deep<sup>4</sup> meaning Yasmāddrawyapari-graheṣhu Chetyukteti (l. 10.) *Since after stating with respect to the acquisition of property &c.* (p. 84. l. 1.) This is the import: Jointness has not been laid down; but it is accepted among<sup>5</sup> the people, as the ownership is, on account of their being together. If now, you say that in regard to wealth acquired even before marriage, the ownership is of the man alone, and that over that acquired thereafter, of the husband, and the wife, that also is not so, for if that were so, there would not be ownership also of son over wealth paternally acquired before his own birth. So enough of more digression. Anyathā stayam syādīn (l. 12.)

1. i. e. the method of admitting a portion and maintaining the objection as to the remainder. The meaning is further made clear by the Author by demonstrating that, as is the case with consecration and the like so also in regard to the acquisition of property, there is co-ownership of the husband and the wife. See also Bṛambhaṭṭi Vol II p 70

2. There is a mistake in the print. for स्वादिना read स्वादिना.

3. V. L. एवं यथाऽऽवृत्तादिषु सहस्यं तत्र स्वरूपेण ।

4. श्रुतिनिधिः 5. लोकनिधिः.

*Otheruisa', it would be theft &c.* (p. 84, l. 7.) Otherwise i. e. in the absence of ownership.

### THE LAW OF SURETYSHIP.

#### Yājñavalkya Verse 53.

- 5 *Urvarâprâyabhūriti* (p. 36. ll. 19-20.) *A very fertile land &c.* (p. 84. l. 23.) "*Urvarâ* i.e. fertile in all crops" vide *Amara*<sup>1</sup>. The word 'default' also follows (the expression) 'of the last, even the sons'; so the Author says: *Vitatha ityeveti* (l. 23.) *by default &c.* (p. 84. l. 32.)

- 10 The Author explains the very falsehood by *Śāthyeneti* (l. 33.) *fraudulently &c.* (l. 33.) When either wickedly or owing to want of wealth the debtor does not pay the debt of the creditor, then the surety for payment should be made to pay; this is the meaning.

#### Yājñavalkya Verse 54.

- 15 The sons of a surety for payment should pay only the original principal. So the Author says, *Te cha mūlameveti* (l. 31.) *And these too.....only the principal amount only &c.* (p. 85. l. 15.) The original itself is the amount. The Author expounds the text of *Vyāsa* by *Prātibhāwyatyatiriktamityādina* (l. 32.) *excepting that which was incurred under a suretyship &c.* (p. 85. l. 20.). Here the expression 'excepting that which was incurred under a suretyship' follows from the context. The Author explains the part 'a son, that which is incurred as a surety'. *Tathā tatsutopiti* (p. 37. l. 1.) *similarly his son also &c.* (p. 85. l. 21.) With a view to expound the part "their sons, moreover, should not pay", the Author analyses the expression 'his sons'.  
25 *Tayoḥ putrapautrayoḥ sutāwityanena* (p. 37. l. 2.) *The sons of these—(i. e. of) the son and the grandson &c.* (p. 85. l. 25.) Anticipating an inquiry who these two are, the Author explains by *Pautraprapautrau* (l. 2.) *the grandson and the great-grandson* (p. 85. l. 25.) The Author now states the meaning of the expression "Their sons must  
30 not pay": *Prātibhāwyāyātamiti*: *incurred as a surety &c.* (p. 85. l. 23.) The meaning is that both the grandson's son i. e. the great-grandson need not pay even a debt which is not a surety debt, and the son's

1. Here there is a mistake in the print. The words *अथवा एतदर्थे*, being an exposition of the words in bold types at the end of verse 52, should be in that verse, and not under Verse 53 as it has been put here.

2. II. 1. 4.

son i. e. the grandson a surety-debt; both these need not pay when they have not taken the heritage.

Anticipating an opposition to the text of Vyâsa viz. "The debt of a grand-father &c." on account of another text : *Yadapi smaraṇam Khādako vittahīna iti* (l. 4.) *as for the text 'if the debtor is moneyless &c'* (p. 85. l. 28). In the text of Vyâsa the payment of the original principal is by the son of a surety for payment; while here, of the *Lagnaka*; i.e. the surety alone has to pay the original and thus the contradiction.

The Author explains away the contradiction by *Tadapiti* (l. 21.) *that too &c.* (p. 85. l. 30.) should be explained—thus is the connection with what follows.

By stating that the sons of a surety for payment should be compelled to pay a debt, it comes to be said that the sons of the sureties for appearance or assurance must not be made to pay. There the Author mentions an exception at times : *Yatra darśana-pratibhūṛityādīnā* (l. 7.) *where a surety for appearance &c.* (p. 85. l. 33.) Here by mentioning that the debt should be caused to be paid from that very pledge, it appears that even if the debt be not completely discharged from the pledge, he should pay as much of the debt as the pledge allows and not more than that.

### Yājñavalkya Verse 55.

*Ataścha dhaniko vittādyapekshayati* (l. 18.) *And hence.....the creditor...having regard to his wealth &c.* (p. 86. l. 23),  
PAGE 32\* By the term ('*Ādi*') &c. are included, truthfulness, high birth, and the like. *Mrte tu Kasminschiditi* (l. 20.)  
*When however any one is dead &c.* (p. 86. l. 27.) i. e. of sureties jointly and severally liable if any one be dead. *Ekachchâyâpravṛṣṭānām* (l. 20.) *of sureties jointly and severally bound &c.* (p. 86. l. 29.) Even the son of a surety jointly and severally liable, may at the option of the creditor, be made to pay in entirety. Among them i. e. those who are jointly and severally bound, if any one die, his son should be made to pay the share of his father only, and not the whole. This is the meaning.

### Yājñavalkya Verse 56.

*Etachcha hiraṇyaviṣṭhayaṃ* (l. 30.) *This moreover, has a reference to money. &c.* (p. 87. l. 14.) i. e. not to clothes, grains or the like. With reference to what has been said 'should

be paid forthwith without waiting for any particular time', the Author anticipates an objection by Nanu Idam wachanamiti (l. 21). *It may be said that this text &c.* (p. 87. l. 16.) by stating that 'a double should be returned' (the payment of) the double only is intended.

5 That double is certainly without prejudice to the rule<sup>1</sup> stated before as to the increase stated above regarding the month &c. and the increase therefor.

This is what comes to be said: when the amount gets doubled in accordance with the rate of interest stipulated by him at that

10 time only should a double be given by the debtor to the surety who has paid off the amount; in any other case, the original amount should be paid together with whatever amount may have accrued as interest, and the payment of a double immediately is improper.

It has been said that the double is deducible even without

15 perjudice to the periods of time mentioned before. There the Author states an illustration of the deduction even without prejudice: *Yathā jāteṣṭhiwidhānamiti*<sup>2</sup> (l. 32.) just as the rule regarding the performance of the rites at the birth (of a child).

This is the last section of the Third Part of the Fourth Book.

20 "On the other hand, when there is no<sup>3</sup> command, there is no reward for the reason that there is no relationship of a part to the whole". There is a Vedic text viz. "On the birth of a son, one should perform the *Vaiśvānara* sacrifice<sup>4</sup> with twelve post-herds. There a question may arise: Is this birth-sacrifice to be performed immediately after

25 the birth of the son, or only after the completion of the birth<sup>5</sup> rituals?

1 l. e. at p. 28. l. 13. citing the text of Nārada I. 104. प्रतिमासं स्रजन्ती या इद्विः सा कालिका मता ।

2 This is called the Jāteṣṭhi maxim, which includes four अधिकरणे running over sutras 39-39. See note in the Mitāksharā.

3 Read अचोदिते न for अचोदितेन.

4 This passage occurs in the Taittirīya Samhitā in the Second Kāṇḍa, Second Prapāṭhaka. Fifth Anuvāka and occurs at p. 1486 of No. 42 of the Ānandāśrama Series. This Anuvāka is described as अमिश्रस्तादिकर्तृभेदिविधिः । The whole passage runs thus विन्दते प्रजां वैश्वानरं द्वादशकपालं विदेरेषुवे जाते यस्मिञ्जातं ज्ञाद्विर्हि विदेरति दूत एवं तेजस्यैवाद् इन्द्रियाणि पशुमान्मवति.

5 जातकर्म—i. e. the special rite which is prescribed to be performed by the father immediately after the birth of the son. It is as follows: Immediately the son is born the father after having a look at him, should bath with his face towards the north in a river &c. with gold, at night, near fire. Then the ritual is detailed. See संस्कारपद्धति No. 94 Ānandāśrama Series pp. 56-58.—See also Āpastamba Gṛhya Sūtra VI. 15. & 1-7, pp. 212-219 Mysore Sk. series; also Baudhāyana II. 1. 1-22. Āśvalāyana sūtra. I. 15. 1-3. and Pārashara XVI. 3-4.

It would appear *prima facie* that the particularisation of the person<sup>1</sup> charged being on account of the reason of the son's birth, the sacrifice must be performed immediately after the occurrence of the reason (therefor) and so even before the birth-ritual. The demonstrated conclusion, however, would be, that birth alone is not the qualification of the person charged, but even the purification &c. induced in the son. And thus the qualification of the person charged is the combination of the birth and the purification (of the son.) The purification &c. of the son, moreover, is desired by the father for a son living, and not under anything contrary to it. The life (of the son) can be derived only from the sucking of the breast, and the sucking of the breast has been prohibited before the birth rituals. Hence the sacrifice can be only after the birth-rituals. And further, thus the sacrifice which is to be performed after the birth having been put<sup>2</sup> off till after the performance of the birth rituals, that should be performed only after the (expiration of the period of) impurity, and not after the birth-ritual only—there being no warrant for giving up the part regarding purity after an interval; and also as the rule that 'an act should be performed by one who is pure' is without an exception. This is in accordance with the opinion of the<sup>4</sup> Guru.

According to the view of the Bhaṭṭa however, on "the other hand, when there is no command, there is no reward, for the reason that there is no relationship of a part to the whole". There is a Vedic Text "On the birth of a son, one should perform the *Vaiśvānara* sacrifice with twelve post-herds". There, a doubt arises, whether the sacrifice is (to be performed) immediately after the birth of the son, or only after the (completion of the) birth-rituals. The objector would say that a special<sup>3</sup> act being necessarily due after the special cause, the special cause being the birth, the performance must be immediately after the

1 This is the वक्ष्य, statement of an alternative.

2 नियोज्य s. e. one on whom the duty of performing the rite has been laid by the Rule.

3 उत्कृष्ट as opposed to उत्पद्य-—used when an act is performed before the due time.

4 प्रवृत्त and मग्नत. These two schools of thought in the Mīmāṃsā literature came into existence after the time of the great Śaṅkarasūrin. One was led by Prabhākara otherwise known, as Guru, an epithet which he acquired from his illustrious disciple Śaṅkaranātha and others, the other was led by Kumārilaṭṭha, and his doctrines are known as Bhāṭṭamata. The present Mīmāṃsā is largely influenced by this view, which had the last word.

5 This has a reference to the invariable cocommittance between cause and effect.



birth. Under the remaining<sup>1</sup> portion of the text, one is entitled to perform the *Vaiśvānareṣṭhi* who has a desire for the purification &c. of the son. However the result regarding the purification &c. of the son is possible only when the son is living. And the life of a son is dependent on his sucking the breast immediately after he is born. That sucking of the breast is only after the birth-rituals. Therefore the conclusion is that the sacrifice should be performed only after the (performance) of the birth rituals, so that it may not be contradictory to the result as to the purification of the son.

In this state of things, another suggestion comes up in a third (mode of) construction. Is the Sacrifice to be after the birth ritual or after the (lapse of the period of) impurity? There, on account of the specially inducing reason viz. the purification in the son, this sacrifice which even though it became due (for performance) after the (occurrence of the) cause (of its performance) in the form of the birth, has been put off till after the birth rites. Having been (already) thus put off, its further postponement until after the expiration of the period of impurity being without a reason, the conclusion appears to be reached that it must be performed immediately after the birth rituals. Therefore it is maintained that the cause for the immediate performance having been qualified by the reason of the consideration of purification and the like, and an exception having been admitted to the immediate performance, in anticipation of a period of purification, it should be performed after the expiration of the (period of) impurity, about the full-moon day or the like period. This latter being also part of a pure period; and also the text, "one should perform an act in a state of purity" being without an exception.

The use of this however to the context is in this way: As the rule regarding the performance of the Birth Sacrifice is without detriment to the rule about purity of time, so the rule as to the doubling is without detriment to the aforesaid rule as to the accumulation of interest according to (the lapse of) time and expressed by the rule. "An eighteenth part is the interest." Therefore it does not get doubled at once.

The Author even points to an incongruity as to a doubling at once. *Apīcha sadya itl.* (p. 37. l. 32.) *Moreover.....immediate &c.* (p. 88. l. 3.) This is the meaning: Immediate doubling means

1 i. e. in the quotation given above in note 4 on p. 76 above वादिप्रजातं वनाभिर्हि विवर्धति इत एव...मपति &c.

immediately along with the interest the doubling occurs and not in its original form. In the case of beasts and the females, the increase is the progeny only since it has been said<sup>1</sup> "in the case of females and beasts, however, ( the interest is ) the progeny." Moreover according to the view as to an immediate payment of the double, there being no immediate progeny in the case of beasts and females, only the original will have to be paid, and not a double ; therefore an immediate double is not proper as it is not inseparably linked.

The Author refutes (this): Tadasadityâdinâ ( p. 38. 1. ) *This is wrong* &c. ( p. 38. 1. 7. ). This is what is (intended to be) said : In the text "In the case of cloth, grain and gold respectively (the interest is ) fourfold, threefold and twofold" the doubling etc. having been reached in course of time by the very force of the expression, the mentioning here again of the doubling in course of time would be improper. Therefore what had not been stated before viz. an immediate doubling must necessarily be the rule (intended) here ; the (reference to the) rule regarding the performance of the birth ritual not being without a meaning. The special point is that this view is even without any contradiction to the text "one should perform an act in a pure state".

Now the objector may (try to) maintain that from this<sup>1</sup> very text viz. "for a debt which the surety has been made to pay &c." a rule as to the payment of a double by efflux of time alone could be deduced from the conclusion drawn in the (discussion of the) particular subject, so the Author says something bearing on that : Atha prâtibhâwyamityâdinâ ( p. 34. 1. 5. ) *again a surety debt* &c. ( p. 38. 1. 18. ) The Author now points out that the payment of a double is by efflux of time only. Ataschâsyeti ( p. 38. 1. 7. ) *therefore this* &c. ( p. 38. 1. 25. ) As there is no doubling of a friendly gift when not demanded, a payment made by a surety also being a payment made on account of friendship as demonstrated before and (therefore) there being an absence of interest, by way of an exception to it for a payment made by a surety, a double in course of time should be paid even though not demanded.

The Author refutes this: Tadapyasaditi ( p. 38. 1. 8. ) *this also is wrong* &c. A sentence is interpreted either according to its literal meaning or by its implied sense. Such a meaning is neither literal,

1 Read इत्यस्यैव for इत्यस्यैव.

2 Yājñ. II. 39. 1 I. 124,

nor does it arise by implication. Therefore, not this interpretation, but on the other hand, the one stated by us is alone acceptable. This is the meaning.

### Yājñavalkya Verse 57.

- 5 Nibandham<sup>1</sup> dāpayettamiti (p. 38. l. 19). *He should be made to pay the amount guaranteed &c.* (p. 89. l. 21.) *Tam i. e.* the amount; he should be made to pay, is the meaning.

Here ends the Law as to Sureties,  
in the Chapter relating to the Recovery of Debts.

### 10 THE LAW OF PLEDGES.

The Author expounds the Text of Nārada<sup>2</sup> viz. Adhikriyanta Ityādī (p. 38. l. 20.) *that which is deposited is a pledge &c.* (p. 90. l. 17.) by Kṛtakāla ādhānakālaschetyādīnā (p. 38 l. 21.) *'At the period fixed' i. e. 'at the time of the loan' &c.* (p. 90. l. 20 & 21).

- 15 There, having mentioned the characteristics of a pledge which has a time limit, the Author expounds the nature of a pledge regarding which no time had been stipulated by Deyam dānamityādīnā (p. 38 l. 33. & p. 39 l. 1.) *deya means giving &c.* (p. 90 l. 25).

- 20 The Author states the nature of a deposit for safe custody: Gopyo rakṣaṇīya iti (p. 39. l. 2.) *for safe custody i. e. for being preserved &c.*

- 25 A pledge for enjoyment is well-known. In this a deposit is said to be of four kinds. Thus, one for safe custody with a time-limit, and one for enjoyment with a time-limit, thus twofold. And one for safe custody without a time-limit, as also one for enjoyment without a time-limit, of two kinds.

### Yājñavalkya Verse 58.

- 30 PAGE 32 B. The Author states the literal meaning : Prayukte dhana ityādīnā (p. 39. l. 5.). *The amount lent &c.* (p. 91. l. 1.) Among the deposits of four kinds also, the Author points out by further sub-divisions Kṛtakālasya gopyasyeti (p. 39. l. 9.) *limited in time for safe custody* (p. 91. l. 14).

1 दापयेत् This is the reading of the पञ्चोपनि. In the मित्तासुत the reading is दापयेत्.  
2 I. 124.

It has been stated that a pledge for custody without a time limit, becomes extinct when the double is exceeded, while those for custody and enjoyment with a time limit become extinct after the lapse of the time fixed. There the extinction occurs by the doubling only and not merely by the lapse of time. But then, even after that, what is the time allowed? So the Author says *Dwaiguṇyâtikrameṇeti* (p. 39 l. 11) *On account of the transgression of the rule of doubling &c.* (p. 91 ll. 19-20) Now, an extinction has been stated to be of a pledge for custody with a time-limit when the amount is doubled. The Author anticipates an objection to it.

*Nanuâdhliḥ prapasyedityanupapannamityâdinâ* (p. 39. l. 15.) *It may be said, it is improper to say that a pledge shall lapse &c.* (p. 96. l. 26). The Author refutes it. *Uchchyate Âdhikarameva loke ityâdinâ* (p. 39. l. 19). The answer is : *Even the act of pledging itself is considered among the people &c.* (p. 91. l. 38.) Coupled with a contingent condition is the cessation of ownership; the cause for that; coupled with a contingent condition is the creation of ownership; the cause for that; thus is the compound to be understood in both places.

Indeed, let this be according to popular practice. Still how can there be an extinction of a pledge in the absence of an entire cessation of the debtor's right of ownership and an absolute acquisition of the proprietary interest by the creditor? Anticipating this objection, the Author says, *Tatra dhanadwaiguṇye nirûpitakâle prâpte cheti* (p. 39. l. 20). *So when the amount becomes doubled, and also when the appointed time has arrived &c.* (p. 92. ll. 4-5).

The meaning is this : By stating the rule viz. "when the stipulated period is over as well as when the amount has doubled a debtor paying the amount in the interval shall get back the pledge" *Bṛhaspati* has indicated that after the amount has doubled as also after the stipulated period is over, the amount may be paid before an interval of fourteen days, and not afterwards. Payment of the amount after that as also after the doubling, is stopped thereby. And when the payment of money is stopped, by the text "a pledge lapses &c." has been indicated an entire cessation of the debtor's right of ownership and an absolute acquisition of the proprietary interest by the creditor.

*Yato natwewâdhau sopakâra iti* (p. 39. l. 33.) *Nor, however, can he get...when the pledge is for use &c.* (p. 12. ll. 11-12). Pledge for use

1 Another reading is तत्र न द्वेयवसान एव &c. It is not adopted here

i. e. a usufructuary pledge. There also it should be understood that no time is stipulated.

### Yājñavalkya Verse 59.

The Author states the characteristics common to the pledges for custody and for use : *Naṣṭo vikṛtiṅgata iti* ( p. 40 l. 2. ) *Has been spoiled i. e. has undergone deterioration &c.* ( p. 93 l. 1. )

The Author expounds so 'as to apply in common to both. *Tatra gopyādhiṇaṣṭaśchetyādīnā* ( p. 40 l. 3. ) *Here a pledge for custody if damaged &c.* ( p. 93 ll. 3-4. ) Destroyed i. e. where it has entirely perished. This should be understood as applicable to both kinds of pledges.

### Yājñavalkya Verse 60.

*Ādhergopyasya bhogyasya cha swikaraṇādūpabhogāditi* ( p. 40 l. 14. ) *Of a pledge i. e. for use as well as that for custody. By acceptance i. e. use* ( p. 93. ll. 26-28 ). It should be understood, that in the case of one for custody; by mere acceptance, and in that for use, by use.

The Author cites a text of Nārada in support of the rule that a pledge for use is established by ( the proof of ) mere use. *Ādhistu dvlwldhaḥ prokta iti* ( p. 40. l. 12. ) *Ādhi is said to be of two kinds &c.* ( p. 93. l. 30. )

Or, of the text viz. "Of a pledge for custody as well as for use &c." there is another interpretation. It is thus : This is the argument : the word acceptance itself has the meaning of use etc. the root *bhuj* is used to indicate protection as well as consumption. In the case of a pledge for custody, use means preservation; here the preposition *ṛ* *Upa* is used in the sense of pervasion. For in the rule regarding prepositions the preposition *Upa* is used to indicate contiguity, power, pervasion, functioning as a teacher, pointing out faults, gift, chivalry, repetition, beginning, worship, engagement, death after beating, investing<sup>1</sup> &c". In the case of a pledge for use, use means consumption. That is to say the consumption of fruits and the like.

In this explanation the Author quotes the text of Nārada in both places: *Ādhistu dvlwldha iti* ( p. 40. l. 15. ) *Ādhi is said to be of two kinds &c.* ( p. 93. l. 30. ) *Asya cha Phalamiti* ( p. 40. l. 16. ) *And the result*

1 Lit, not eating.

of this &c. (p. 93. l. 32.) That is to say of the clause "The (contract of) pledge is established by the (proof of its acceptance &c.)"

The Author points out the result itself at details : Swikārānta-  
kriyett ( p. 40 l. 11 ) in transactions which have been completed by accept-  
ance &c. (p. 93 l. 34.)

The Author (now) expounds the meaning of the portion "If it suffers  
deterioration even when carefully kept" by *Sa chādhiḥ prayatnenetyā-  
dīnā* (p. 40. l. 18) And if such a pledge.....carefully &c. (p. 94. l. 2. )

### Yājñavalkya Verse 61.

It has been stated before that a thing may be kept with oneself or  
made over to another. There the Author states the thing kept with  
oneself. *Dhaninaḥ swachchhāṣayatweneti* (p. 40 l. 25) Relying upon  
the good faith of the creditor &c. (p. 94 l. 18). 10

The Author mentions the thing made over to another : *Yadi wā  
adhamarṇasyeti* (p. 40 l. 26) Or where,...of the debtor &c. (p. 94. l. 21). 15

The Author gives a derivative exposition of the word *satyanākāra*  
by *Karaṇam Kāra* (p. 40 l. 29) *Kāra* is the same thing as *karaṇa* &c.  
(p. 94. l. 26).

The Author expounds in another way the text 'a debt contracted  
on a *charitra* pledge,' &c. by *Anyortha* &c., (p. 41. l. 1.) Another  
meaning &c. (p. 95 l. 1.) 20

### Yājñavalkya Verse 62.

*Asannihite punaḥ prayoktari iti* (p. 41. l. 10). When, however,  
the creditor is absent &c. (p. 95. l. 26). *Prayoktā* (obligor) i. e. one  
who advances the loan i. e. to say, the 'creditor.' 35

### Yājñavalkya Verse 63.

Anticipating a position where 'the creditor himself (may) be  
absent, and there are no relatives of his (who are ready) to take the  
amount, the Author propounds an answer: *Tasmiṇ Kāle yattasyādher-  
mūlyamiti*. (p. 41. l. 15.) The price of the pledge at that time  
&c. (p. 96. l. 8.) 30

1 Add at the end of p 32 after the words कर्तव्यं विविधं वृत्तं । स्वीकारान्त-  
क्रियेति । 'स्वयमगोऽप्यसक्तत्वात्' इत्यनुवर्तं व्याचष्टे । स चापि । प्रयत्नेन इत्यादिभिः ।

What has been said before viz. 'or when the creditor is absent &c'"  
an answer to it is : Yāwadwā tanmūllyadrawyamiti ( p. 41. l. 16.) *Till  
the.....amount equal to its value &c. ( p. 96. l. 120 ).*

The<sup>1</sup> Author explains the meaning of the term *wā* (or) in the  
5 original text Wāśabdo Wyawasthitavikalpārtha III ( p. 41. l. 21.) *The  
word wā is intended to lay down the rule of distribution in the optional  
case that would arise.*

The Author points out the rule in an optional case by Yadarṇa-  
grahaṇakāle &c. ( p. 41. l. 21.) *When at the time of the loan &c.  
10 ( p. 96. l. 24 ). Vichārīte twayamiti ( p. 41. l. 22.) In case of a contract-  
however the rule here &c. ( p. 96, l. 28 ), i. e. the one laid down in this  
text as aforesaid.*

### Yājñavalkya Verse 64.

Yadā prayuktam dhanamiti ( p. 41. l. 26.) *When the amount ad-  
15 vanced &c. ( p. 97 l. 1. ) This is the import: When the amount advanced  
as a loan had become doubled together with the interest, and a pledge  
has been delivered for use thereafter, then when the creditor has  
received a double of the amount realised from the pledge, the pledge  
should be given up.*

Yadi wā ādāveveti ( p. 41. l. 27.) *Or.....if even at the beginning &c  
20 ( p. 97. l. 8.) This is the import: At the very time of taking a loan the  
debtor thus says to the creditor, 'when the amount becomes doubled  
along with the interest, then this pledge is to be utilised by you,  
and not before that.' Thus, on account of the special stipulation,  
25 unless it becomes doubled, till that time the pledge shall not be used.  
Or until it becomes doubled, until that time, even in the case of  
a pledge tendered at the time of receiving the loan, there shall be an  
absence of use subject to the Act of God or of the King or any difficulty  
or any other cause. Thus in both cases, on account of the reason that  
30 even a pledge delivered at the taking of the loan cannot be utilised  
when the debt becomes doubled and thereafter the creditor begins  
to utilise the pledge, and even the amount realised from the pledge is  
doubled, so that it becomes equal to the double made up of the amount  
advanced together with the interest, the pledge should be released.*

1 Add दलवचनस्यवाशान्द्वयविधायमाह । या शब्दो व्यवस्थितविकल्पार्थ इति । व्यवस्थित-  
विकल्पार्थत्वमेव विभज्य दर्शयति ( यदुर्णमद्वयकाल इत्यादिना ) &c.

The Author explains the texts of Bṛhaspati viz Rñi bandhamavāpnuyāt &c. (p. 42. 1. 2.) *The debtor shall get back the usufructuary pledge.* &c. (p. 97. 1. 22.) by Asyārtha iti (p. 42. 1. 3.) *The meaning of this text* &c. (p. 97. 1. 25.) There the Author explains together with its meaning and import, the one sentence ending with "the debtor shall get back the usufructuary pledge the time for which has been matured" beginning with Phalam bhogyam yasya &c. (p. 42. 1. 4) *That wherein the profits are to be enjoyed* &c. (p. 97. 1. 26.) and ending with bandhamavāpnuyāt (1. 6.) *Shall get back the pledge* &c. (p. 97. 1. 31.)

The explanation of *after paying off the principal amount* (p. 97. 1. 23.) is to pay off interest simply, (1. 29.)

With a view to introduce the explanation of the passage '*If it has exceeded, then the creditor does not get the amount*' (p. 97. 11. 23-24.) the Author says, Asyāpawādamāheti (p. 42. 1. 8.) *The Author mentions an exception to this.* &c. (p. 97. 1. 37.)

The Author expounds the passage '*The debtor also will not get back the pledge*' (p. 97. 1. 24.) by Atha twaprakarṣhitam &c. (p. 42. 1. 10.) *If, however.....has not been exceeded* &c. (p. 98. 11. 1-2.) If it has exceeded, then the creditor does not get the amount (11. 23-24.) is one sentence, and 'the debtor also will not get back the pledge' (11. 24-25.) is another. To these both Bṛhaspati himself states an exception, so the Author says: Punaḥ ubhayatrāpawādamāheti (p. 42. 1. 11.) *Again the (same) Author mentions an exception to both these cases* &c. (p. 98. 1. 5.)

End of the Chapter on Recovery of Debts.

## LAW OF DEPOSIT.

PAGE 34\* Yājñavalkya Verses 65, 66, and 67.

Verse 66. Grahītuh Saha Yortheneti (p. 42. 1. 27.) *Together with the property of the depositary* &c. (p. 99. 1. 12.) The meaning of this: The amount which is lost along with that of the depositary, that loss shall be of the depositor i. e. of the owner of the amount and not of the custodian of the deposit or of any other. This moreover is by way of extension to loss by robbers &c.

Asyāpawādamiti (p. 42. 1. 29.) *An exception to this* &c. (p. 99. 1. 15.) i. e. what has been said (above) viz. "*which has been carried away by*

1 Read तद् दानम् for न दानम्.

2 V. L. दोषविध्यादिप्रकरण for दोषविध्यादि &c.



force—shall not be caused to be restored" (p. 99. ll. 3-4.) In this chapter the rest stands explained by the mere mention.

End of the Chapter on Recovery of Debts.

## Chapter V, OF WITNESSES

Arthlōā Swārthasāldhyarthamiti (p. 44. l. 6.) By [the plaintiff for establishing his claim &c. (p. 10. l. 7.) The meaning of this; 'Plaintiff' i. e. who has to establish a point, 'for establishing his claim', arranges where a man is so placed as not to be known by the Defendant and is made to hear the words of the Defendant in a manner so as to be clear, such a one is mentioned as a *secret witness*.

Lekhakaḥ Prādvivakāṣha Sabhyāṣchalvānupūrvaṣaḥ nrpo paśyati tatkāryaṁ sākṣiṇaḥ samudārhtaḥ iti (p. 44. ll. 16-17.) The writer the Judge, the Sabhyas, have in order, been laid down as witnesses when the case is under investigation by the king &c. (p. 103. ll. 14-16.) Since they have been stated together; this is the remainder<sup>1</sup>.

The meaning of this (is as follows): When the king inquires into the case i. e. the proceeding under trial, these i. e. the writer and others 'in order', i. e. in the absence of the one mentioned before the one next in order, are witnesses and not that when the writer and others are themselves in charge of the court, that they themselves shall be witnesses, since it has been distinctly stated that 'when the King inquires &c.' The mention of a judge, stated (again) along with the writer &c. is with a view to indicate the inclusion of the writer and others by implication: From the point of commencing the chapter of witnesses, having said something by way of an introduction, now the Author introduces the original text by Te cha Sākṣiṇaḥ Kidrśa iti (p. 44. l. 13.) Of what kind such witnesses &c. (p. 105. l. 17.)

## Yājñavalkya Verses 68 & 69.

With a view to indicate that, Nārada himself has pointed out witnesses declared to be incompetent by a special text, the Author says

1 हेतुः The remaining portion of the argument or context.

Ke punarvachanādasākṣhiṇa iti (p. 45. l. 1.) *what witnesses again are incompetent under a special Text &c. (p. 105. l. 2.)*

Nrgrantha iti<sup>1</sup> (p. 45. l. 5 and p. 105. l. 10.) i. e. the (p. 153.) unbelievers. Sākṣhiṇām likhitānām chati (p. 45. l. 7.) *witnesses..... entered on record &c. (p. 105. l. 17.)* The meaning of this: entered as witnesses viz. 'these (are) the witnesses' so written in a document by the parties; among these witnesses if one (even) depose falsely, these would be incompetent as witnesses on account of a contradiction. 5

The Author explains the text Yorthaḥ Śrāwayitavyaḥ syāt (p. 45. l. 11.) *When a claim has to be proved &c. (p. 105. l. 25.)* Yenārthina pratyarthina wā ityādina (p. 45. l. 12.) *Either by the plaintiff or the defendant &c. (p. 106. l. 1.)* 10

*This is what is (intended to be) said: 'In this particular suit these are 'the witnesses' after having thus indicated the witnesses in a particular suit, afterwards, if he dies without specifying any particular proof in regard to these men so indicated, or the particular point in the suit had not been set out, then in such a suit (it being impossible to know) for what proof he is to be a witness, he is not a competent witness on account of an intervening decease. Or in whose case a gap i. e. a separation has ensued on account of a dead (man), is a witness with an intervening decease.* 15 20

Having thus generally established the inadmissibility of a witness with an intervening decease, the Author mentions an exception, Yatra tu mumūrṣetyādina (p. 45. l. 14.) *Where, however.....at the time of death &c. (p. 106. l. 7.)* Mṛtāntararthīḥ prete Mumūrṣhu-ārāvītādṛṣṭe iti (p. 45. l. 15.) *A witness becomes incompetent on account of intervening decease, unless he has been named by the dying man &c. (p. 106. ll. 11-12.)* The meaning of this is that if a disputant dies, the witness is called 'a witness on account of intervening decease'. 25

Mumūrṣhuśrāvītam vinā (p. 45. l. 16.) *without his having been named by the dying man &c. (p. 156. l. 11.)* This is the import. Having established by means of a text of Nārada that one who has been named by a dying man is a witness on account of intervening decease the Author cites a text of Nārada also for the portion that one mentioned even by one in health can become a witness with an inter- 30 35

1 See Yajñ. II 192 and the Mitāksharā thereon where, the word Pākṣhandinaḥ has been explained as ये वेदस्य प्रापायपक्षे वेदप्रतिपक्षः इति वादः

vening decease by Tathā Śrāvitenātu, eṇāpīti<sup>1</sup> (p. 45. l. 16.) *Moreover, where a witness has been named by one free from any disease &c.* (p. 106. l. 13.)

### Yājñavalkya Verses 70-71.

- 5 Having thus considered at great details the nature of incompetent witnesses, the Author now introduces the original text on this point Tānentaṇasākṣīna itī (p. 45 l. 18). *These are those incompetent witnesses &c.* (p. 106. l. 17).

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### Yājñavalkya Verse 72.

- 10 It may be objected, indeed more than three are also to be conversant with law, and even one is to be so versed in law, and so both are to be so (versed), and thus the expression "more than three" would be meaningless, so anticipating the objection the Author refutes it
- 15 *Yadyapi Śrautas-mārtakriyāparā ityādīnā* (p. 46 l. 4). *Although..... devoted to the performance of the Śrauta and the Smārta rites &c.* (p. 107. l. 27).

- Indeed it may be said that adultery, theft, insult and heinous offences all these are designated as *sāhasas* (Heinous offences), and therefore their separate mention is not proper; so the Author refutes by
- 20 *Manuṣhyamāraṇaṃ Chāuryaṃ &c.* (p. 46. l. 11) *manslaughter, robbery &c.* (p. 108 ll. 14-15). This is the import: An act in the presence of people and by a show of one's strength is force; these offences of adultery &c indicated by the word *sāhasa* are included in such force. An act done aside by means of one's strength is also force. This
- 25 *force, therefore, differs by the difference of its objects. And from that it is designated by the word adultery &c. according to the difference of the acts done in private in relation to the several subject matters.*

### Yājñavalkya Verses 73, 74, 75.

- 30 With a view to indicate that in the text "A Brāhmaṇa should be required to swear by truth, a Kshatriya by his conveyance and by his weapons, a Vaiśya by his kine" Manu himself points out an exception

1 i. e. any one of the parties,

The Author says : *Atra chāpawādastenaiva &c (p. 46. l. 26). Here also an exception.....by the same Sage &c. (p. 109 l. 17). Here, cowherds, and the rest are to be taken as adjectives of the word Vipras and not independently.*

*Aneka janmârjitâ sukṛtasaṅkramaṇasyeti (p. 47. l. 16.) The transference to another of the merit acquired through innumerable births &c. (p. 110. ll. 24-25). Many are those births ; there acquired ; that merit ; the transference of that wherein is what is known as the transference of the merit acquired through innumerable births. Thus is the compound ( to be solved).*

### Yājñavalkya Verse 78.

Indeed witnesses incompetent on account of a contradiction have been stated before.<sup>1</sup> Now by the text " In a disagreement—of the majority &c." even in spite of contradiction, they become (admissible as) witnesses ; and therefore there would be a mutual contradiction. Anticipating this objection the Author says : *Yattu bhedâdasâkṣhiṇa iti (p. 48. l. 12.) What, however.....incompetency as witnesses on account of contradiction &c. (p. 112. l. 21.)* Where there is equality in point of number, qualities &c. there being an absence of a speciality, there would be incompetency as witnesses on account of a contradiction. Where, however, there is a difference in the number, quality, &c. there would be a competency as a witness as stated before, and this in spite of a contradiction. This is the import.

### Yājñavalkya Verses 80.

*Pûrwoktalakṣhaṇaṇi sâkṣhibhili sâkṣhye swâbhiprâya iti\* (p. 48. l. 27) When evidence has been given by witnesses qualified as above in the matter under consideration &c. (p. 113. ll. 16-17). In the evidence given in relation to his claim, in contradiction to the allegations in the plaint. This is the order (of words).*

Now, a witness is one who well knows the case for the disputant ;<sup>2</sup> the quality of that is called evidence. This very evidence is the case intended by the plaintiff himself. Thus evidence means one's own intention. Therefore the word evidence has been explained as one's own intention. In this sense, the order of words is as found (in the text).

1 i. e. at p 45 l 30 (Text)

2 This should have been in the bold type as it is a quotation of the words of the Mitâksharâ.

3 and.

Nigada datta III (p. 48. l. 30).....was given &c. (p. 115. l. 14). Nigadaḥ is a statement loudly made in clear terms in the presence of the councillors and other people. In that given *i. e.* made. This is the meaning.

5 Yadārthī pratijātārthasyeti (p. 49 l. 3) *When the plaintiff.....about the allegations in the plaint &c.* (p. 113 ll. 34. 35). This is the import: Conscious in his own heart about the truth of the allegations in the plaint, a strong conviction having been formed that that alone was the fact, in any exposition other than on that basis leads to a suspicion of a defect even in the witnesses. There is thus no visible defect in these  
10 witnesses. And therefore by reason of the defect in them thus imagined, resort to another evidence verily follows. And with such other evidence the assessors at the trial should proceed with the suit, *vide* the text<sup>1</sup>. "After discarding all circumvention.....according to actual facts".

15 It may be asked, indeed, how can a fault be seen in the witnesses from one's own consciousness?<sup>2</sup> so the Author demonstrates it *by means* of an illustration, Yasya cha dushtaṁ karaṇam (p. 49 l. 4). *He whose sense of perception is faulty &c.* (p. 114 l. 3). The meaning of this is this:

20 PAGE 36\*. One whose organ of perception such as the eye or the like is faulty *i. e.* affected by a defect of the glasses or by jaundice e. g. where in regard to a subject of cognition that 'It is silver' there is an opposite cognition viz. 'This is not silver'.—Such a cognition *i. e.* knowledge is not good. This is the meaning of the passage cited as an illustration to suit the context. So the Author says: Yathā  
25 Chakshurāditi (p. 49. l. 5.) *as.....such as the eye &c.* (p. 114. l. 5.) This is the import: On account of an incongruity as to the subject matter owing to the thing e.g. the mother of pearl being wrongly taken as silver, the consciousness that 'this is silver' is unreal<sup>3</sup> as is the case in the passage in the illustration, so also is to be the application here.

30 Not only by argument is a resort to another means of proof proper, but even by reason of the authority of a text also, so the Author says: Sākṣhiparīkṣhātirekeneti (p. 49. l. 6.) *Evidence of witnesses.....by means other than &c.* (p. 114. l. 9.) The import is this: The decision is to be reached not merely by the evidence of witnesses, but also by  
35 an examination of their statements. And thus while the examination of the depositions of witnesses is being made if their statements are uncontradicted, then these are evidence; otherwise when the state-

1 Yājñ. II. 19.

2 V. L. स्वप्रतिज्ञा वाङ्मित्र इत्येव: कथं is the correct reading and the translation is based on it.

3 For एवमात्मकमिति &c. read एवमाद्येवमात्.

ments of witnesses stand contradicted, there would be an assumption of a fault in the witnesses themselves; and this is ascertained on the strength of the process of examination.

The Author explains the text of Kātyāyana viz "when evidence is free from fault &c" (p. 114 l. 12). Kriyā Sākṣīlakṣhaṇetyādīnā (p. 49 l. 9) *Evidence in the form of witnesses &c.* (p. 114 ll. 15 16) 5  
Sa śuddhastathā (p. 49 l. 11) *Is considered as true* (p. 114 l. 42) is the explanation of the word *śuddhi*. Tathābhūta itī (p. 49 l. 11.) *Having been found as such &c.* (p. 114 ll. 22 23). Found as such i. e. found as a fact, that is to say, as true. The Author states the import of the text of Kātyāyana : Karaṇadoṣhabādhakapratyayābhāva itī (p. 49 l. 12) *In the absence of any data for inferring a fault in the senses &c.* (p. 114 ll. 14 18). By the portion 'When evidence is free from fault...principles of justice' (p. 114 ll. 11-12) is mentioned an absence of a fault in the senses indicating the nature of evidence in the form of the signs of witnesses. And by the passage "a plaint which has been found to be correct by comparison with testimony refined" &c. is indicated an absence of a sign of anything contradictory. And thus in the absence of a fault in the senses or a sign of any thing contradictory, the subject matter is not false i. e. is true. This is the meaning in substance. 10 15 20

Swabhāwenalva Yadbrūyurīti (p. 49 l. 20). *Whatever witnesses declare quite naturally &c.* (p. 115 l. 9.) The expression 'quite naturally' in the text is to be understood to apply in the present context, as before having any idea that their evidence would be inconsistent with one's allegations in the plaint where even others are cited<sup>1</sup> as witnesses. 23  
The Author refutes what has been said about a position of inconsistency at the time of defence—Ataḥ paramaparitūṣhyatāpīti (p. 49 l. 24) *after this...even though he be dissatisfied &c.* (p. 115 ll. 18-19).

It has been stated that when a plaintiff relying upon his own consciousness is dissatisfied with his evidence he may resort to other evidence; such, however, is not the case in the case of the Defendant, so the Author says Yatra tu pratyarthīnaḥ (p. 49. l. 26) *where, however, the defendant &c.* (p. 115 l. 21). 30

The Author points out the subject of the text of Manu "He to whom...happens" &c. Etachcha yasyochuḥ sākṣīnaḥ Satyāmīti (p. 49. l. 20.) *This, moreover,...he whose witnesses depose to the truth &c.* (p. 115 ll. 33-34). This is the meaning : If it be asked, moreover, 35

in which respect is this text of Manu, viz 'He to whom happens &c.' is to be regarded as an exception to the text viz. "He whose witnesses depose to the truth of a plaint, shall be successful" the Author has stated this. Others, however, regard it as relating to the derivative meaning only.

This is what amounts to be said: If after the statements of witnesses have been made the defendant is satisfied,<sup>1</sup> then the success is of the plaintiff, and the defeat is of the defendant. If however, owing to a disagreement with his own consciousness the defendant is not satisfied, then while the statement of witnesses is being tested, if the witnesses are found to be faulty, then by the text of Manu viz "He to whom within seven days...happens &c." stands countered by the text<sup>2</sup> of Yājñavalkya viz. "He whose witnesses depose to the truth &c." and therefore moreover the success will be of the defendant, and of the other party the defeat.

With a view to attack the exposition of a part of the text<sup>3</sup> of the Yogiśvara viz. "Even after evidence has been given by witnesses &c." the Author again repeats the explanation and states an objection viz: *Some explain the text even after witnesses have given evidence &c.* (p. 115 l. 36) and refutes it Tadasaditi (p. 50 l. 2) *this is wrong &c.* (p. 116 l. 4).

With a view to bring out clearly the genesis of the evidence of the defendant the Author explains the nature of the position of a plaintiff and of a defendant; Tathā hīarthī nāmeti (p. 50 l. 2). *Because a plaintiff is he &c.* (p. 116 l. 6.)

It may be said let it be that the defendant has to prove a negation, but how does it become germane in the matter of the burden of proof? So the Author says Tatrābhāwasyeti (p. 50. l. 3.) *Here... of the negation &c.* (p. 116. ll. 8—9.) This is the import: The negation of an affirmation is negation. A negation is by its nature dependent upon an affirmation. For, when a negation is mentioned, a question as to whose negation it is may be anticipated, and the explanation would be by relation to the exposition of the jar, and the cloth, which are referred to their counterpart viz the negation or absence of a cloth, or the absence of a jar, &c., as also in the non-existence caused by destruction, the nature of the negation or non-existence being established at a period subsequent to the estab-

1 See Bālabhāṭṭa,

2 Yājñ. 11. 79.

3 II. 80.

lishment of the affirmation, the establishment of a negation is relatively dependent upon the nature of the affirmation. While, on the other hand, quite contrary to this, an affirmation is established quite independently without regard to a negation, and, therefore, the establishment of an affirmation<sup>1</sup> is independent of the establishment of a negation. And thus of the two the affirmative and the negative (respectively) being established by dependence and independently, on account of its being established independently, it is proper that an affirmative should be established as a point. 5

It may be contended, indeed what harm is there that because a negation is established by dependence therefore it should be regarded as a point to be established, so the Author says *Abhāwasya swarūpeneti* (p. 50 l. 4) *By its very nature a negation &c.* (p. 116 l. 12) This is the meaning: An affirmative may be directly measured by the means thereof such as witnesses and the like, while a negation is not directly measured but mediately through the affirmation; and moreover, a point which can be directly measured can alone be the point to be established and not that which has to be measured mediately. 10 15

Now the objector states by anticipation another interpretation of the text "Even after evidence has been given by witnesses &c" by *Atha matam* (p. 50 l. 9) *It may be said again &c.* (p. 116 l. 23) It has been said that this is an exception to it. If it be asked, which is that exception? Anticipating this, and with a view to state the subject of the exception deductively, the Author points out the subject of the text<sup>2</sup>. "When two persons quarrel &c." *Atascha pūrwottaryorwādinoriti* (p. 50 l. 13). And therefore, when the witnesses of both the prior and second complainant &c. (p. 117 l. 5.) 20 25

The Author mentions the point of the exception *yadā tūttara-wādīna iti* (p. 50 l. 14), *Where, however, the witnesses for the later complainant &c.* (p. 117 l. 7). 30

The Author points out that in this explanation the fault adverted to above does not exist: *Evaucha nābhāwasyeti* (p. 50 l. 15.) And thus there would be no...for a negation &c. (p. 117 l. 9.) It may be said, indeed, by stating that when the witnesses for the plaintiff and the defendant are even<sup>3</sup>, the witnesses for the plaintiff should be examined, and when 35

1 For भावने तद्वैयर्थ्य read भावस्य वैयर्थ्यमित्येन &c.

2 Of Nārada.

3 समस इ. e. equal in number or quality or both as has been elaborated in the next line.



the witnesses for the defendant either have greater merit or are double then only the defendant's witnesses should be examined, even in one suit there would be burden on both the disputants, and thus there would be a contradiction of the rule "In one suit the burden of proof cannot lie on two litigants", so the Author says  
 5 Chaturvidhottaravilakṣhaṇatwāditi (p. 50 l. 15). *The answer is of a kind different from the four varieties of answer &c.*  
 THE ANSWER. (p. 117. l. 11.) The import is this: It is only in the (four kinds of) answers (viz.) (the admission of)  
 10 the truth, the denial, special reason, or *Res Judicata*, that the burden of proof does not lie on both the plaintiff and the defendant. In the present instance, however, both being (in the position of) defendants, the answer being a different one from these, the rule as to the burden is accordingly.

15 The Author mentions another way: Ekasmin vyawahāre yatheti (p. 50 l. 16), *As, in the same trial &c.* (p. 117 l. 14). The meaning is this: As according to the opinion of *another i. e.* of the *Siddhāntin*, after the depositions of witnesses have been made the allegations in the plaint appear to be falsified, and as this does not agree with  
 20 the internal conviction, there is a resort to another means of proof, similarly according to our opinion also, a double proof of the plaintiff and the defendant takes place.

This is what is (intended to be) stated: It may be said that as according to the opinion of the *Siddhāntin*, even when the rule that 'there cannot be a double proof for one' is in force, in the case  
 25 of an incongruity with one's own internal consciousness, there is a resort to another means of proof, so in our view also even when the rule exists that "In one suit the burden of proof will not lie on two litigants" there is a double proof in the manner stated. The Author refutes this by *Tadapyāchārya iti* (p. 5. l. 17) *Even this the Venerable Teacher &c.* (p. 17. l. 16.) 'The Venerable Teacher', viz. Viśvarūpāchārya, as will be found in this work in the passage "expanded by the hard language of *Viśvarūpa*" &c. From this text 'even after the witnesses have given  
 30 evidence either from....express &c'. 'From this' i. e. from this text. This is the meaning.

1 There appears to be a difference in the reading of the text of the *Mittākshara* as adopted by Bhaṭṭa Vīśeṣwara. Instead of 'उक्तेषु साक्षिभिः साक्षे' इत्यतः सदात्. This also appears to be the reading found in other editions. There, the word सदात्: 'this' means 'this text' viz. उक्तेषु साक्षिभिः &c.

# Yājñavalkya Verse 81

Krodhāttu trigunam paramiti (p. 50 l. 28) *through wrath however three times the last.* (p. 118 l. 12) *the last<sup>1</sup> i. e. The heighest sāhasa.*

After stating a special punishment for special reasons such as covetousness and the like, the Author states a special punishment for false evidence : Tathā kauṭasākshyantwiti (p. 50 l. 31) *similarly... false evidence &c.* (p. 118 l. 23 ). The Author points this as applicable only to ( where it is ) habitual Etachchābhyāsaviṣhayamiti (p. 50 l. 32 ) *This, moreover, is applicable to (a case of) a habitual &c.* (p. 118 l. 24 ).

This is what is (intended to be) said : In the case where there is no habit, the commission having been only once, the termination ending in (kta) and indicative of the past would be used so that the form would be *Kṛtān*. It is not so with the *Śānach* termination ending with *Kurwāṇān* *e. i.* (making), which is indicative of the present tense. The present continuing means the non-completion, of what has been begun. By reason of false evidence having been given again and again and as if it is not ended, the continuing present also is indicative of the giving of the false evidence. Hence it is that it is said that it is applicable to where it is habitual.

The Author expounds the text 'who give false evidence': *Triṇ varṇāniti* ( 50 l. 30) *Three orders &c.* ( p. 118 l. 26 ). *Asya chārtha-śāstrarūpatwāditi* (p. 51 l. 1.) *and as this text is in the nature of an Arth-Śāstra &c.* (p. 111 l. 29.) 'This text, *i. e.* the text,...'however,... false evidence &c.' (p. 118 l. 22-23).

Indeed, is it that banishment alone is everywhere for a Brāhmaṇa, and not a pecuniary punishment? Anticipating this, the Author says Brāhmaṇasyāpi lobhādikāraṇaviśeṣhāparijñāne chetyādinā (p. 51 l. 5.) *Even in the case of a Brāhmaṇa when no special motive, such as covetousness etc is known &c.* ( p. 119 ll. 7-8.). *Atrābhyāsa iti* (p. 51 l. 10.) *Here also in the case of a habit &c.* (p. 118 l. 17.) That is, the implication that here also in the case of higher ones, for all *i. e.* of the Brāhmaṇa and the rest, an absence

PAGE 33\*. of punishment is inferred, is improper. It may be said, indeed, a pecuniary punishment does not hold for a Brāhmaṇa as in the text of *Śankha* in the case of the

<sup>1</sup> पयस् last *i. e.* the highest of the Sāhasas. Here there is a mistake in the print. Instead of पयस् उच्यते &c read पयस्चम &c.

three orders viz. the Kṣhatriya and the rest, deprivation of property, corporeal punishment, imprisonment and ordeal, while for a Brāhmaṇa, banishment alone has been stated. Anticipating this the Author refutes it : Yattu Śankhawachanaṃ trayānāṃ warṇānāmityādinā  
 5 (p. 51. l. 15.) *As to the text of Śankha, of the three orders &c. (p. 120 l. 1.)* This is the substance of the refutation : Deprivation of the entire property of a Brāhmaṇa is forbidden, not any kind of punishment.

It may be asked, merely on account of the deprivation of wealth having been mentioned along with corporeal punishment how can a  
 10 deprivation of the entirety follow ? so the Author says Śārīrastwawarodhādīriti (p. 51. l. 16.) *as for the corporeal punishment it begins with obstruction &c. (p. 120. ll. 7-8.)*

### Yājñavalkya Verse 82.

Etachcha pūrwaślokepyanusartawyamiti (p. 51. l. 30.) *And this*  
 15 *again should be followed (to be the rule) even in the last verse &c. (p. 121. ll. 4-5.)* This is the meaning : What has been stated that for a Brāhmaṇa unable to pay money, banishment, and for the Kṣhatriya and the rest unable to pay money fettering in chains &c. should in each case be read separately. Tadānubandhāpekṣhayeti (p. 51. l. 32.) *then...regard*  
 20 *being had to the exigencies &c. i. e. by regard to caste, the property, qualities and the like.*

### Yājñavalkya Verse 83.

Yatra warṇānām Śūdrawiṣkṣhtrāvīprānamiti (p. 51. l. 8.) *where*  
 ...to men of the four orders i. e. of the Śūdra, Vaiśya, Kṣhatriya and Vīpra  
 25 &c. (p. 121. ll. 21-23.) Here the enumeration of the four orders in the inverse order is with a view to indicate that the killing of (a member of) even the lowest order is censured, what then of the highest ?

It has been stated before that 'a permission for giving false evidence or for refusing to give evidence is given.' In that case in anticipation of the inquiry 'where is permission for giving  
 30 false evidence given ?' as also 'where permission for refusing to give evidence is given ?' the Author indicates the subject where a false evidence is permitted. Yatra Śankābhityogādāwiti (p. 52. l. 7.) *where e. g. a complaint founded on suspicion &c. (p. 121. l. 19.)* The Author mentions the place where refusing to give evidence is

permitted: *Yatra tu satyawachanamiti* (p. 52. l. 8.) *Where, however, by speaking the truth &c.* (p. 121. l. 32.)

The prohibition against telling a falsehood is of two kinds, General and Particular. The General as e. g. in "one should not speak an untruth; one not speaking or speaking falsely" and the like. The Particular is instanced<sup>1</sup> in 'To all these shall he go who gives false evidence', 'A person not giving evidence' and the like.

In such a position it may be said that as to this particular prohibition regarding giving false evidence or not giving evidence by reason of the same having been permitted, there would be no (necessity of) expiation in such a case for false evidence or for not giving evidence, so the Author says *Sākṣhīpāmanāwachanam cheti* (p. 52. l. 27) *false evidence ... for witnesses &c.* (p. 122-22 ll. 23). It may then be asked, indeed, where is the rule as to the *Sāraswatacharu* as (is stated) in the passage "for purification from that &c." the answer would be that as there is no permission for infringing the general prohibition, this expiation is with a view to wipe off the sin resulting from infringing it, so the Author says *Yattu sāmāntam wadediti* (p. 52 l. 18) *the text that one should not tell an untruth &c.* (p. 122. l. 27).

It may be said, indeed, this text viz. "Where men of the four orders are likely to suffer capital punishment, there a witness may speak the untruth" which is in the nature of sanctioning what is prohibited, is meaningless,<sup>2</sup> since the guilt produced by the infringement of the rule regarding giving false evidence or not giving evidence would stand; anticipating this the Author refutes it: *na cha mantawyam ityādina* (p. 52 l. 20). *it may be objected &c.* (p. 122 l. 129). The import of the refutation is as follows, viz, that the Author's demonstrating the absence of the fault of infringing the general prohibition is with a purpose.

It may be said, (even) the thought of Brāhmicide produces sin; a greater sin than that would be an attempt at it, and the greatest sin at the killing, and thus even when sin increases relatively to each one before, as by the performance of the expiation for the greatest sin produced by killing, smaller sins produced by the thought or attempt of it are wiped off, so here also by reason of the permissive text, the greatest sin being removed let<sup>3</sup> it also work at the removal of the incidental sin produced by the infringement of the general prohibition regarding

1 Yājñ. II. 74; 76

2 अर्थः may also mean-conveying a perverse meaning.

3 Here there is a mistake in the print Read अतः for आतःपश्चात्ततः.

telling a falsehood, as the Author says that on account of the permission in the text "where ... of the four orders &c", and on account of

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the force of the text "For purification from that ... should be present &c" there is no cessation of the smaller sin, and proceeds by Yadyapi bhūyasā &c (p. 52 l. 23) *although ... of greater &c.* (p. 123 l. 3). The import is this: If there be a permissive text itself, then by the cessation of the greater sin, the cessation of the incidental smaller sin may also occur. But there is also a text prescribing expiation. Therefore for the purpose of avoiding the fault of meaninglessness in this, the non-cessation of the incidental smaller sin is assumed.

The Author extends elsewhere also the rule stated above, *Etadeveti* (p. 52 l. 26) *this.....also &c.* (p. 123 l. 9). By reason of the extension of the rule stated before, an extension of the rule as to expiation may necessarily follow, so the Author mentions a restriction of it: *na cha tatreti* (p. 52 l. 27) *and there however not &c.* (p. 123 l. 13):

Here the Author mentions the genesis: *prātiṣṭhēdhāntarābhāwāditi* (l. 27) *as there is no other prohibition &c.* (p. 123 l. 12). This is what is (intended to be) said: As even when there is a general prohibition as to telling an untruth or against not speaking, there is still a particular rule prohibiting witnesses from it, similarly there is not a double prohibition in the case of a traveller and the like, but the rule as to prohibition is general only. Therefore as there is not any other particular rule of prohibition, and on account of the permissive rule there being an absence of the sin of infringing the general rule of prohibition, he does not incur an expiation.

Here ends the Chapter on Witnesses.

## Chapter VI. OF DOCUMENTS

"Evidence has been laid down to consist of writing, possession and witnesses". In this enumeration<sup>1</sup> of human evidence, although writing has been mentioned first on account of the connection of the witnesses and writings, having treated their priority as if not existing, in course of the context, possession, although placed in the middle, was treated first. And then having (first) understood the nature of

<sup>1</sup> Yājñ. II. 22.

witnesses, by the text "there should be made a writing—with witnesses," the rule as to writings being accompanied by witnesses being more intelligible, the chapter on writings coming in after that on witnesses would be (more) appropriate, so the Author says: *Bhuktisākṣhīṇau nirūpitāwiti* (p. 53 l. 1) *possession and witnesses have been explained &c.* (p. 124 l. 1). 5

The Author introduces the original text by *Tatrānyakṛtamāheti* (p. 43. l. 6.) *of these the Author mentions &c.* (p. 124. l. 15.)

### Yājñavalkya Verse 89.

*Yuktamarthakramāparilopeneti* (p. 54. l. 16.) *with.....without* 10  
*prejudice to the sequence of sense &c.* (p. 127. l. 4.) 'Without...prejudice to the sequence of sense' i. e. without infringing the rule of script or letters; such a writing; this is the order. The Author expounds the text of Nārada 'Not opposed to the usage of the country &c.' by *Vidhānam vidhiriti yātinā* (p. 54. l. 19.) *that which explains in details is* 15  
*a (rule) vidhiḥ* (p. 227. l. 11.)

### Yājñavalkya Verse 90.

*Na turyādibhiriti niyamyata iti* (p. 54. l. 26.) *and not by the*  
*last and others &c.* (p. 127. l. 37.) 'The last' i. e. the fourth, meaning 20  
a great-grandson.

The Author meets that objection stated before: *Bāḍhaṁiti* (p. 54. l. 27.) *true &c.* (p. 127. l. 35.) The meaning is this: By the text 'a debt should be paid off by sons and grandsons' (*the rule comes to be that*) a debt whether reduced to a writing or not reduced to writing should 25  
generally be paid by the three only, and another rule cannot hold under the authority of another Smṛti viz. that a debt evidenced by a writing should be paid by sons and grandsons only and not by the great-grand-sons; and thus a doubt as to an exception in the case of a debt reduced to writing may arise<sup>1</sup>, so the text 'A debt evidenced by writing should be paid' has been stated. The Author points out this very thing 30  
by reference to another<sup>2</sup> Smṛti in connection with the same text: *Tathāhityādīnā* (p. 54. l. 28.) *for &c.* (p. 128. l. 2.)

The Author expounds the text of Kātyāyana adverted to before: *Ittham patrārūḍhaṁiti* (p. 54 l. 29) *thus.....which is entered in a docu-*

1 Read जावते for जावते

2 Read दृष्टव्यं न दृष्टव्यं...दृष्टं &c. for दृष्टव्यं न दृष्टव्यं &c.

ment etc. (p. 128 l. 5). The Author explains how a doubt may arise by reason of this text, that in the case of a debt reduced to writing, that must be paid by sons and grandsons only and not also by the great-grandsons : Atra pitṛṇāmīti (p. 54. l. 30.) here by...pitṛṇām &c. (p. 128 l. 7).

This is the import : The plural ends in three. Therefore by the statement pitṛṇām "of ancestors", an inference arises that the debt of a great-grandfather must be paid by a great-grandson. Moreover, even the grandson may be dead after the time has passed, and then on account of texts such as 'sons and grandsons should pay a debt' and the like, although the non-liability of great grand-sons and the like coming after the grandson is established, still owing to the expression 'after the time has passed' a doubt may arise that a debt entered in a document is payable even by the great-grandsons and the like, so the Author concludes : Ataschett (p. 55 l. 3) therefore &c. (p. 128 l. 14). It may then be asked, if this be so, then what would become of the text of Kātyāyana and Hārīta ? so the Author says Vachanadwayam' cheti (p. 55 l. 3) the two texts &c. (p. 128 l. 16).

### Yājñavalkya Verse 91.

\* PAGE 40 The Author mentions the operative portion in the text 'Is in another country, is badly written &c.' Vyawahārākṣhama iti (p. 55 l. 15) unfit for a suit &c. (p. 129 l. 6). In anticipation of a question, how would the unfitness for a suit (occur) ? the Author says Vyawahārākṣhamatwam chetyādīnā (p. 55 l. 14.) unfitness for a suit etc. (p. 129 l. 7). Here the connection with the sequel is that it becomes unfit for a suit.

Yathopanyastāsādhyātheti (p. 55 l. 29) in which is indicated how the point at issue was proved &c. (p. 130 l. 4). The meaning of this :

'The point at issue' i.e. the point sworn to in the plaint, accompanied by that ; similarly accompanied by the answer, in the form of the second part, as also by the proof e.g. in the form of a document or the like ; similarly 'which has also the decision' ; 'decision' i.e. the determination ; containing it, is the jayapatra.

Etachcha chatuṣhpādvyawahāra eveti (p. 56 l. 3) moreover this..... judicial proceeding which contains the four components &c. (p. 130 ll. 18-19). 'This' i.e. the jayapatra.

1 This has a reference to the rule of Grammar that when a word is used in the plural number the least number intended cannot be less than three, as for one and two are the singular and the dual numbers.

## Yājñavalkya Verse 92.

Sākṣhyasambhāwaviśhayamidaṃ Hārītavachanam itl. (p. 56.1. 19) where it is not possible to have witnesses this text of Hārīta &c. (p. 131) l. 33.) This i. e. that which is to be presently quoted i. e. the passage which begins with 'I did not &c.'

## Yājñavalkya Verse 93.

The Author expounds the passage "or the creditor should endorse the amount received &c," in another way: Yadwopagatam praveśa-patramitti (p. 56.1. 29.) or a note of acknowledgement of receipt &c. (p. 132 l. 13-14). The rest is easy.

Thus ends the Chapter on Documents.

## Chapter VII.

### THE ORDEALS

## Yājñavalkya Verse 95.

A rule is possible in three ways, by relation to a particular offence, by regard to the nature of an ordeal, and in relation to both. Thus: One is, that ordeals are ordained only in accusations for serious offences; these are the characteristics of ordeals is another; and that these are the characteristics of ordeals in serious accusations only is the other. In this state of things, the only rule appears to be that the five ordeals indicated in "the balance, the fire, the water &c." are only in cases of serious accusations only; there is no rule as to the characteristics nor regarding a particular offence, and so there would be an incongruity with the text of Pitāmaha, so the Author says Etāni mahābhiyogeshwevetyādīnā (p. 87. l. 18). These are to be resorted to only in cases of serious accusations &c. (p. 133. l. 23). Here in the expression 'and not moreover' the word moreover is with a view to explain away the particular rule.

The Author anticipates an objection to the rule that the ordeals mentioned above are in cases of serious accusations only, and so says Nanu alpābhiyogepitl (p. 57. l. 19.) Indeed...even in ordinary suits &c. (p. 133. l. 26.) The Author refutes by satyam (p. 57. l. 19.) true &c. (p. 134. l. 1.) This is the meaning: The enumeration of kṛśa along with the balance and others is not with a view to indicate its restricted





application to serious accusations only, but with a view to indicate that as these i. e. the balance and the others occur in complaints accompanied by a challenge, so also *kośa* is in complaints with a challenge.

- 5 *Sāvaṣṭambhābhilyoga* III *Complaints with a challenge* &c. i. e. where the accused says "I know the guilt of this man" and offers to abide by the result (of the ordeal), that complaint is called an accusation with a challenge.

### Yājñavalkya Verse 96

- 10 *Alpābhilyoge mahābhilyoge śankāwaṣṭambhāyoritī* (p. 58. l. 6.) in a petty complaint, in a serious charge, as also in a charge founded on suspicion &c. (p. 155. l. 12-13.) "In a petty complaint" by the text "a *kośa* should be administered even in petty charges", and by the text 'these in trials for serious complaints', and by the text "the rice and *kośa* in complaints of suspicion only; there is no doubt about this". While in cases of challenge, the text "the balance, the fire, the water, the poison, and the *kośa*" by their mention along with the balance and the rest should be regarded as already set out by the text "when the complainant has agreed to abide by the result".

- 20 *Tulādīni viṣhāntānityādī* (p. 58. l. 6.) beginning with the balance and ending with the poison &c. (p. 135. ll. 14-15). Here also it should be understood that the rule has been indicated to be applicable 'only in complaints with a challenge, by *Mahābhilyogeshveva* (p. 58. l. 7.) in trials for serious charges only i. e. by the text 'these in trials for serious charges only', as also in the text 'when the complainant offers to abide by the result'.

- 25 *Mahāchāuryābhīśankāyām cheti* (p. 58. l. 11.) and also in charges of robbery &c. (p. 135. l. 25). Here even without the complainant offering to abide by the result, the rice and the rest should be administered; thus is the connection with what has been stated before.

- 30 *Rājabhīṣ Śankitānām cha nirdiṣṭānām cha dasyubhīṣitī* (p. 58. l. 11.) who have fallen under suspicion of kings, as also those who have been pointed out along with robbers &c. (p. 135. ll. 36-37.) Here although in the text "pointed at along with robbers" by these words a suspicion for theft may not be produced, still by the force of the context beginning with the expression 'suspected by kings', and owing to the unreliability of robbers, even when pointed out along with them, a suspicion is indeed created.

Although the statement is general in the text<sup>1</sup> in the case of persons charged with theft &c., still, by reason of the severity of the ordeal of the heated coin, it is considered to be a great ordeal, and it is but proper that by reason of the consequence<sup>1</sup> which follows viz. the (ordeal of the) heated coin being great its cause also viz. a charge of theft is great. This, moreover, will be demonstrated at details in the Book on Expiations. 5

Abhlyogeshu sahyeṣhwiti<sup>2</sup> (p. 58. l. 16.) in bearable cases. 'Bearable' i. e. which can be borne, i. e. which are mild.

Brāhmaṇaparivrājakaḥ (p. 58. l. 20.) on the analogy of the rule in the Brāhmaṇa and Parivrājaka maxim &c. (p. 136. ll. 15-16.) 10  
This is the meaning: After the statement 'invite the Brāhmaṇas' although the Parivrājakas are also included being indistinguishable from Brāhmaṇas, still as the specific statement again viz. 'invite the Parivrājaka' is with a view to demonstrate the pre-eminence of the Parivrājaka, so although the balance &c. as also the oaths are (stated) among ordeals, still the specific mention of oaths separately from the balance &c. is with the object of indicating the reason of inducing a decision after an interval of time. This is what is (understood to be) said : 15  
As the specific mention of Parivrājaka separately is in consequence of a separate reason, so the separate mention of oaths is also owing to a separate cause ; and that cause has already been stated before. 20

Or, there is another meaning of the expression 'like the rule in the Brāhmaṇa and Parivrājaka'. In a statement 'invite the Brāhmaṇas, also invite the Parivrājaka' although by the direction for inviting the Brāhmaṇa, the invitation of the Parivrājaka is also established, as by the direction of inviting the Parivrājaka, the word Brāhmaṇa is understood to have a wider application than the word Parivrājaka, similarly although the balance &c. and also the oaths are understood to be ordeals, still from the use of the word ordeals and the word oaths (separately), it is (understood) that the word ordeal has a wider application than the balance. 25 30

Indeed, if oaths are the means for a decision after an interval of time, then the mention of Kṛṣa among the balance etc. which are the means of an immediate decision would be improper. Anticipating this, the Author puts in mind the reason already stated before: Kośasya tu śapathatwepiti (p. 58 l. 20) however of the ordeal of Kṛṣa &c. (p. 136 l. 17). 35

1 Read नेमिदिकृतवमापदोऽप्येति निमित्तस्य चोपलक्षणा.

2 In the Mīṣakhaṇḍa the reading is सह्ये.

It may be said, as to what has been stated that in "all disputes like (those relating to) debts and others, ordeals should be administered according to the possibility" is not correct; for in the case of (disputes regarding) immovables, it would be contrary to the text of *Pitāmaha*. so  
 5 the Author, anticipating this objection refutes it: *Yattu Pitāmaha-  
 wachanam sthāwareshwityādina* (p. 58 l. 14) *as for the text of  
 Pitāmaha viz: in disputes regarding immovables &c.* (p. 137 l. 1).

It may be said again, if that be so, in the text of *Pitāmaha*, in  
 10 disputes regarding immovables the word immovable is meaningless,  
 for even in other disputes, when human evidence is possible the  
 ordeal is inadmissible, so the Author says: *Nanu vivādāntareshwiti*  
 (p. 58 l. 25) *indeed.....in other kinds of suits &c.* (p. 137 l. 6.) The  
 Author refutes it by admitting a half by *satyam* (l. 26) *true &c.*  
 (p. 132 l. 8) The Author indicates the appropriateness of the word 'im-  
 15 movable' *Sthāwareshu vivādeṣhu pratyarthineti* (p. 58 l. 29.) *in dis-  
 putes regarding immovables...by the defendant &c.* (p. 137. l. 19.) This  
 is the import: In disputes regarding immovables there is no option  
 in regard to human evidence or the ordeals, and so the word immovable  
 is used with a view to remove the rule as to option.

### 20 Yājñavalkya Verse 97

It may be said that by the very reason of the rule having  
 been stated to be applicable in the hot seasons etc, other seasons come to  
 be prohibited, a negation again therefore is meaningless, so the Author  
 removes it: *Vidhānalabdhasyāpi punariti* (p. 59. l. 22.) *already establish-  
 25 ed by the affirmative injunction &c.* (p. 139. l. 13.)

### Yājñavalkya Verse 98.

It may be said, in the text, 'Fire and Water, or for a *Śūdra* seven  
*Yawas* of poison &c.' let there be an option for the *Śūdra* alone regarding  
 (the ordeal of) fire, water, and the poison, why is its application invited  
 to the *Kṣatriya* and the *Vaiśya* when they are not mentioned, so the  
 30 Author says: *Brāhmaṇasya tulāvidhānāt śūdrasya yawā iti* (p. 59.  
 l. 29.) *by ordaining the balance for a Brāhmaṇa and barley for a Śūdra.  
 &c.* (p. 140. ll. 1-2.)

PAGE 42\* Indeed, in the case of women and the like class when others besides them, accuse or are accused by each other, let the absence of an ordeal be for women only, under the text 'or by consent of any one etc,' there being an option; but what if women and the like accuse each other? So the Author says: *Parasparābhīyogo twiti* (p. 60. l. 4.) *in cross-complaints however &c.* (p. 140. l. 17.)

It may be said, indeed, as there is an option as regards the performance of the ordeal, so let there be an option regarding an ordeal also, the Author says, 'it may be so in justice', but he says that by reason of the text of the Lord of the Yogis viz. "women, a child, old men &c." there is a restriction as to the balance: *Tatrāpi tulālveti* (p. 80. l. 4.) *even there .....balance only &c.* (p. 140. l. 18.)

It may be asked, is this restrictive rule only in the case of charges with a Challenge? Anticipating this, the Author says no, and says: *Tathā mahāpātakāditi* (p. 60. l. 5.) *in...about heinous offences &c.* (p. 140. l. 20.) Here, the word 'moreover' in the expression 'or moreover &c.' is with a view to indicate a similarity with balance in the case of women and the like, and not with all, as there is no similarity between an accusation on suspicion and an accusation with a challenge.

It may be asked is this rule as to the balance in the case of women and the like applicable for all reasons? So the Author says, no, by *Etachcha wachanam &c.* (p. 60. l. 5.) *thus this text &c.* (p. 140. l. 22.) This i. e. this text of the Lord of the Yogis viz. 'women, a child &c.'

The Author sums up the proposition stated: *Tasmātsādhāranakāla iti* (p. 60. l. 11.) *therefore...at common periods &c.* (p. 141. l. 1.) With a view to restrict (the application) the Author says *Idamiti* (l. 12.) *thus &c.* This i. e. the text of the Lord of the Yogis viz. 'Woman, child &c.'

By means of affirmative and negative rules, and by texts such as "For fire the *Śiśira* and the *Hemanta*" and the like (different ordeals) have been pointed out before for different seasons such as the *Śiśira* and others. It has been stated there that the justifying circumstances will be mentioned further. These the Author now points out: *Kālāntare tu tatkalāvihitamityādina* (p. 60. l. 12.) *during other periods, however... prescribed at the respective times &c.* (p. 141. l. 23.) The Author sums up the reason stated before: *Sarvathāpi vidhīpratiṣṭhedhādṛtukālānātikrameṇeti* (p. 60. ll. 17-18.) *having regard to the prohibitive rule in*

1 Here there is a mistake in the print. Verse 98 ought to end with *इत्येति* and Verse 99 should begin with the words *नन्वर्तिजम् &c.* which must be in bold type.

general...do not offend against the rule as to seasons and time &c,  
(p. 141. ll. 22-23.)

### Yājñavalkya Verse 99.

Madhyawarṣi jalamapiti (p. 60. l. 21.) *water also, which is in the midst*  
5 &c (p. 141. l. 32.) The meaning is that in the text, "the balance, fire  
water, poison and *Kosa* &c." water stands in the midst of the balance  
and the poison, and so it is described as in the midst.

Atra Kōśasya grahaṇamiti (p. 60 l. 22) *Here the use of Kōśa &c.*  
Here i. e. in the text 'Never until...a thousand &c.' Etāni chatvāri  
10 diwyāniti *these four ordeals &c.* (p. 142 l. 2) i. e. the balance, the fire  
the water, and the poison. Etachcha wachanadwayamiti (p. 60 l. 27)  
and moreover, both these texts &c. (p. 142 l. 14) i. e. the one of the  
Lord of the Yogis viz 'never until—a thousand &c.' and the other  
that of Pītāmaha viz. "in a thousand—the balance &c.", (p. 142 l. 6).  
15 The rest is easily intelligible.

Here ends the Procedure for ordeals.

### Yājñavalkya Verses 100-103

Here the form of the balance is described. The form of the balance  
is in the chapter relating to the balance. Śhaṣṭhyāhaḥ &c. (p. 63 l. 29)  
20 of sixty a day &c. (p. 149 l. 2) Khāgnibhirdinalmāsa iti (l. 29) *with*  
*thirty days is made a month &c.* (p. 149 l. 3). Here by the word *kha*  
(sky) is expressed a zero; ; by the word fire, the (figure expressing the)  
number (three) 3; and therefore a figure like this i. e. 30. is formed.

### Yājñavalkya Verse 113.

25 The balance, fire, water, poison, *Kōśa*, rice, heated *māṣa*, the ordeal  
of Dharma and Adharma, Oaths as in "In (a case where the value of  
the subject matter is) *niṣkha* there should be an affirmation on oath"  
as also the rule regarding the punishment consequent on a failure of an  
ordeal, thus the chapter on ordeals with ten parts dealing with each  
30 kind of ordeal as also the supplementary parts is easy of understanding.

Thus ends the chapter on Ordeals.

Here ends the chapter on Ordeals in the Subodhini  
a Commentary written by Bhaṭṭa Viśveśwara on the Mitrakṣara.

# Chapter VIII<sup>1</sup>.

## ON THE DISTRIBUTION OF THE DĀYA

Wishing to expound the Chapter on the distribution of the dāya with great effort<sup>2</sup>, the Author points out the connection between the former part of the book with the latter by a reference<sup>3</sup> to the verses: *Pramāṇam mānuṣham dīwyamiti* (p. 13 l. 1) *evidence, human and divine &c.* (p. 171 l. 1).

The Author explains the meaning of *Dāya*: *Tatra dāyaśabdeneti* (p. 73 l. 2) *here by the term dāya &c.* (p. 74 l. 5): The meaning is this: That wealth comes to be designated as *dāya* which becomes the property of the sons and the like, whose property it becomes on account of their connection viz. of the procreated and the procreator, with the owner i. e. the father and the like, of the wealth, and by reason of which connection, it becomes the property of those i. e. the sons and the rest having a counter-connection.

The Author states the nature of the unobstructible *dāya*: *Tatra putrāṅgāṃ pautrāṅgāṃ cheti* (p. 73 l. 4) *there of the sons as well as of the grand-sons &c* (p. 171 ll. 9-11). The import is this: In the wealth of the father, as also in the wealth of the grand-father, the ownership of the son and the grandson comes about even without the intervention of any one other than themselves, and so it is an unobstructible<sup>4</sup> *dāya*.

The Author expounds the nature of an obstructible *dāya*: *Plitṛ-bhrātrādīnāmīti*<sup>5</sup> (p. 73 l. 8) *of the father, brothers, and the like &c.* Those of whom the parents and the brothers are the first, of that type. *Evam tatputrādīśhwapyūhaniyamiti* (p. 73 l. 8) *the same should be understood also in the case of their sons and the rest &c.* (p. 172 l. 6). Here by the word (tat) 'their' are included the sons &c. of the son and the grandson. The point is this: Of him whose connection as to ownership is without interruption with the existing owners, the *dāya*

1 This chapter is wrongly shown as 9th in the *Subodhinī*.

2 For प्रयत्नः i. e. प्रयत्नः.

3 दायद्वयेन. The text of *Yājñavalkya* is a running statement of verses one after the other arranged in 3 groups of Books viz. *Āchāra*, *Vyavahāra* and *Prāyāścitta*. This subdivision of Chapters by heading is by *Vijñāneswara*.

4 The original is अवरोधः. Mayne and other writers translate this as unobstructed. See note 4 *Mitāksharā* p. 171.

5 The other reading is पित्र-भ्रातरादीनां, 'uncle, brothers etc.' This is the reading adopted in the *Mitāksharā*, where also this variant is met with. *Bālabhāṣya* has also पित्र. This reading appears to be better than पित्र-भ्रातरादीनां.

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4 i. e. above in the commencement of this chapter.

6 s. e. of what property.

chintyata iti (p. 73 l. 14) 'of what a partition' is the subject considered here &c. (p. 172 ll. 19-20).

Here the consideration is twofold: For, the subject is the wealth which is to be distributed. There a doubt (comes up), will the distribution be of that which is not one's own, or of what is one's own? From this arises the consideration of another topic, viz. 'Whether a distribution is the cause of ownership or not.' If distribution be the cause of ownership, then the distribution would be of that which is not one's own, and the ownership would be by this distribution, and not before that, as the distribution is not because of the cause of ownership. Hence arises a view that distribution is of that which is not one's own. On the other hand if distribution is not the cause of ownership, but birth itself, then the ownership being from the very birth, there comes up a view that the distribution is of that which is one's own; this is one (point for) consideration. The Author indicates this (point for) consideration: Kim vibhângâtswatwamuta swasya sato vibhâga iti (p. 73 l. 14) *does the right of partition arise after partition or does partition take place of ownership after there was the right of ownership &c.* (p. 172-ll. 21-22):

Another consideration is the subject of ownership. The Author mentions that: Tatra swatwameva tâvannirûpyata iti (p. 73. l. 15). *Here the right of ownership itself is being explained &c.* (p. 172 l. 23). Here, the subject is the right of ownership. Then a doubt (arises): Is the right of ownership solely within the range of Śāstra, or is it also affected by other popular indicia of evidence? The Author sets out this very point: Kim sāstraiḥkasamadhigamyam iti (p. 73. l. 15). *is deducible from Śāstra alone &c.* (p. 172. l. 27.) The Author takes the side of the objector: Tatreti (l. 16). *here &c.* (l. 26). The Author states the cause: Gautamawachanāditi (p. 73. l. 16.) *on account of the text of Gautama &c.* (p. 173. l. 27). The Author sets out the same text; swamiriktiheti (p. 73. l. 16.) *an owner is by inheritance &c.* (p. 172 l. 28.).

The Author points to a fault in the reasoning which would indicate other popular causes: Pramāṇāntaragamyatwetī nedam wachanam (p. 73. l. 18.) *if.....from other (means of) proof this text would not &c.* (p. 123. l. 1.) This i. e. the text of Gautama, will not have a meaning. This is the import.

1 i. e. birth itself gives rise to the right of ownership This birth-right of a member of a joint family is the corner stone of the Mitākṣhar joint family which is founded however on Yājñ. II. 114. एतत् निवर्तनीयम् &c.



The Author points to a defect in the view that the right of ownership is a worldly matter. *Apl cheti* (l. 21.) *moreover* &c. (p. 173. l. 9.) There the reason is *Apahartureva swatwāditi* (p. 73. l. 22.) *the ownership would be with the trespasser himself* &c. (p. 173. l. 12.) The Author  
5 notes a special objection *Atheti* (l. 22.) *now* &c. (l. 12). The Author refutes it : *Evam tarhiti* (l. 22.) *then* &c. (l. 14.)

This is the import: If the (right of) ownership were a worldly matter then when the ownership of one is taken away by another, and if he who has been deprived says 'my own has been taken away by him', then  
10 among the assessors<sup>1</sup> who hear this there would be no doubt, viz. whether it is his, or that other's. As in worldly transactions, by the sight of the form of gold, silver and the like, there could be no doubt whether it is gold or the like, or not, so even as regards ownership there would be no doubt, by reason of the right of ownership  
15 being a worldly matter. But a doubt is produced; therefore it cannot<sup>2</sup> be said that the ownership cannot be with the trespasser. Or, when the plaintiff says since he has taken (a thing of) the ownership itself of another, the right of ownership cannot be of the trespasser he should be asked—"would not a cognition arise that the ownership  
20 may or may not be of the trespasser". So anticipating, the Author refutes the first: *Evam tarhiti* (l. 22.) *thus then* &c. (l. 14). The import is  
PAGE 44. this: As with the accession of knowledge, that this is gold and this is silver, no doubt arises as to the nature of gold  
and the like, so in the present case also. Nor also the second. By the  
25 very appearance of the knowledge, it would be impossible to assert that the right of ownership cannot belong to the trespasser. So refuting it at the very outset, the Author sums up the objection : *tasmāditi* (l. 23.) *therefore* &c. (l. 16.)

The Author states the conclusion : *Atrochchyata iti* (p. 73 l. 24) *to this the answer is* &c. (p. 173 l. 18). The Author mentions inference as a source for (the proposition that) 'ownership is a worldly  
30 matter' : *Laukikameva swatwamityādina* (l. 24.) *ownership is temporal only* &c. (p. 174 l. 18). The inference is thus: ownership is temporal, as<sup>3</sup> it is the means of proof of a worldly object. For, whatever is a means of  
35 establishing a worldly object is worldly, as in the case of rice etc. Similar is the right of ownership, and therefore it is worldly. What-

1 Lit. the hearers, the audience. The other reading is मोक्षर्षा.

2 Add the following after अतोऽप्यर्हति एव न मयतीति on p. 43. l. 34.—ननु न तदवश्यं । अपरा वतोऽप्यर्हति एव न मयतीति, अतोऽप्यर्हति एव न मयतीति इति ननु वादी यद्वयं, अतर्हति इति न मयतीति.

3 लौकिकार्थकिमावाचनार्थात्.

ever is not worldly, cannot also become the means of proof of a worldly object, as is the case with the *Āhawaniyatwā* &c. Thus the Author points the concommittance by the negative method: *Āhawaniyādjanāṁ-twā* (l. 24) as regards the *Āhawaniya* &c. (p. 174 l. 24)

The Author now states an objection (based on the rule) that an inference not tested by the negative reasoning is no means of proof. *Nanvāhawaniyādīnām* it (p. 73 l. 25) indeed, even the *Āhawaniya* &c. (p. 174 l. 23). By reason of the fact that even in the case of the *Āhawaniya* non-temporal as it is, it is still the means of things temporal such as cooking and bursting etc. the rule of the negative concommittance viz. whatever is not temporal is not<sup>2</sup> the means of proof of things temporal-becomes vitiated. This is the meaning. 10

The Author sums up by *Nātat* (l. 26) not so (p. 173 l. 25). This is the argument : Of the *dhawaniya* and the like there are two kinds, the non-temporal i. e. being *dhawaniya*, and the temporal i. e. simple fire, 15 and thus the boiling<sup>3</sup> of food is done by the temporal fire and not in its character as the non-temporal *dhawaniya* and the like, for if that were so, the boiling of the food would not be done by the temporal fire, which is without the characteristics of the non-temporal *dhawaniya* and the like. Therefore there is no vitiation of the rule of concommittance 20 by the negative method.

It may be said, indeed, in the present case also let the worldly transactions such as the purchase or sale of gold and other things be by means of the form of the gold &c, and not by right of ownership. Anticipating this, the Author says : *Iha tu suvarṇādīrūpetyādīnā* (p. 73 l. 27) here, however,.....visible form either of gold or the like &c. (p. 174 l. 1.) 25

: Among people such as the *Mlecchas*<sup>4</sup> and the like, ignorant of the procedure in the *Sāstra* such as the transactions based on ownership, are seen. Therefore an absence of a genesis thereof in any other way is 30

1. p. 44. l. 10. Read तद्वत् लोकाकार्यक्रियावापनमिति &c.

2. i. e. the concommittance of the two negations e. g. वनं न विदुर्वाणि तत्र दूतोऽपि नास्ति as opposed to the अन्यथापि viz. वनं वनं दूतस्तत्र तत्र वाणि ।

3. वाक्यापनम्. There is an entirely different reading of this passage in some copies e. g. Setur p. 595 ll. 9, 11. It is thus: अयमभिमतिः । आहारीयस्य द्वे रूपे । आग्निश्चाहारी-यस्य च । तथा च आग्नेय लोकाकार्यक्रियाकारित्वेति द्वितीयेन न तथापि ( तथा वाक्यलोकार्थे &c ).

4. In the *Mitāksharā* the expression is परस्मैपदविहितः । Here the word used is अत्रेष्ट. The lexicon of Amara has परस्मैपदोऽत्रेष्टेष्टः शब्दः II. l. 7. चानुर्ध्वं परस्मैपदं परस्मैपदो न विद्यते । तं अत्रेष्टविधं बाहुवाच्यं तत्रेष्टः परस्मैपदोऽत्रेष्टः &c.

also an evidence that ownership is temporal. Anticipating this the Author says : *Api chetyâdinâ* (p. 73 l. 28) *beside* &c. ( p. 174 l. 5 ) .

By saying that 'use of property is seen,' it comes to be said that the use of property is likely to give rise to the inference that ownership is temporal. Here, the Author refutes an objection as to the inference necessarily arising from the context viz. an absence the ownership which was (inferentially) assumed *Krayavikrayâdiriti* (1. 29) *purchase, sale and other* &c. ( p. 174 l. 8. )

*Tathâ hi lipsâsûtre*<sup>1</sup> *îrtiyawarṇaka iti* (p.74. ll. 1-2.) *moreover in the third clause of the Lipsâ Sûtra* ( p. 174. l. 13. ). In the first *Pāda* of the Fourth *Adhyaya* the aphorism in the Second *Adhikaraṇa* is as follows "In which there is a desire of a man and that desire is indicated by (a certain) object (which is) inseparably connected (with it)." There, in the first part is the consideration of the characteristics of the *Kratvartha* and the *Puruṣhārtha* ; in the second (is the discussion) whether the milking of cow is *Kratvartha* or *Puruṣhārtha*. In the third *varṇaka* however is the following discussion:

Bearing no particular context are laid down in the *Śruti* the rules for the acquisition of wealth thus ; "A Brāhmaṇa should obtain wealth by acceptance of gifts &c. ; one of the kingly order by conquest and the like ; and a *vaśīya* by agriculture and the like". There comes up a doubt, are these rules in the nature of *Kratvartha* or of *Puruṣhārtha* ? The objector would maintain that, although they have been stated without a context, if the rule regarding the acquisition of wealth be not accepted as *kratvartha* there would be an absence of the person for whom they are directed, and there would be the misfortune of the rule regarding the acquisition of wealth being meaningless, also of the multifariousness of the agents, and so through the instrumentality of wealth which sets the agent on, it is proper that these (rules) should be regarded as *kratvartha*.

It may be said, indeed, this objection itself cannot come up ; as there would be no accomplishment of the *kratu*. For, if the rules regarding the acquisition of wealth were regarded as *kratvartha*, then by reason of the fact that ownership is not created by temporal causes, and there being no other cause mentioned in the Vedas, the causes such

1. कर्षणः 2. This is called the Lipsâ Sûtra. See note 3 p. 174. Mîtāksharâ English Translation. See also note. 8 on p. 65-66. Vyavahāra-

Mayukha Eng. Tr. वसिष्ठेन वृक्षस्य वीतिवृत्तिरिति न वृक्षतः । कर्तव्यं यः न कर्तव्यः । Śābara.

3. I. e. a detached statement, not bearing any reference to any subject or context.

4. For स्वस्वस्यलौकिक read स्वस्वस्य लौकिक &c. on p. 44. l. 29.

fore rules are for a *Puruṣārtha*. In case of an infringement of a rule, the fault is of the person, there would be no defect in the *Kratu*. According to the objector, however, the rules being *Kratvartha*, by any infringement thereof there would be a fault in the *Kratu*.

We resume the point under discussion. It has been said that those conversant with the science of reasoning deem ownership<sup>1</sup> as a matter of popular recognition viz: *Tathā hi lipsā sūtra ityādina* (p. 74.) because, in the *lipsāsūtra* (p. 174 l. 12).

There, the Author sets out the statement of the objector that the rules regarding the acquisition of wealth are *Kratvartha*, beginning with *Drawyārjananyamānām* (l. 2) of restrictions relating to the acquisition of wealth &c. (p. 174 l. 14) and ending with *Pūrwapakṣtāsambhawamāśankya* (l. 3) anticipating an untenable objection &c.

This is the import: In the third part of the *lipsā sūtra* the point for consideration is whether the rules regarding the acquisition of wealth are *Kratvartha* or *Puruṣārtha*. There the objector maintains that they are *Kratvartha*. That does not hold. For, if the rules regarding the acquisition of property were regarded as *Kratvartha*, the ownership being non-temporal would not be productive of worldly causes, and there being no other means mentioned in the *Vedas*, and the rules regarding the acquisition being *Kratvartha*, and thus being for another object, the right of ownership itself does not arise. Moreover, the right of ownership being absent and by non-ownership a *Kratu* not being accomplished, the position of the objector that the rules are *Kratvartha* does not hold.

The Author supports the objector's position. *Drawyārjanasya pratigrahādineti* (p. 74 l. 3.) of acceptance of wealth and other modes of acquisition &c. (p. 174 l. 16). This is the argument: The rules regarding acceptance and the like, by the very fact of securing ownership, become *Kratvartha* through the wealth requisite for a *Kratu*, as the act of striking while separating the husk becomes *Kratvartha* through the paddy useful for a *Kratu*. That ownership, moreover, aged people regard as established in popular recognition just as sonship &c. is. Therefore there is no absence of the accomplishment of a *Kratu*.

It may be said, indeed, let acquisition be a means of (establishing) ownership; (but) the rules regarding acquisition being *Kratvartha*, the acquisition itself is *Kratvartha*, and thus having a reference to another

object the right of ownership itself will not occur, the absence of a *Kratu* is to be found to be there itself. The Author sets out this objection : Nanu Cheti (p. 74. l. 4.) *indeed, moreover* &c. (p. 174. l. 18.) The Author refutes it : Pratāpitamīdamiti (p. 74. l. 5.) *it is a blunder* &c. (p. 175. l. 1.) Arjanam swatvam Nāpādayatīti (p. 74. l. 5.) *that acquisition does not produce proprietary interest* &c. (p. 175. ll. 23.) Thus saying some one has committed a blunder. Whence? Vipratishiddhamiti (l. 5.) *is a contradiction* &c. (l. 3.) Thus is to be the construction.

This is the meaning : Acquisition is a quality of the acquirer in a relative form. That has a relation to the two, such as in the case of father and son. Moreover acquisition not being possible to be effected without the thing to be acquired, it is a contradiction in terms to say that 'acquisition does not produce proprietary interest', just as to affirm 'my mother is a barren woman'.

Vichāraprayojanamukṭamiti (p. 74. l. 6.) *proceed to explain the purpose of the disquisition* &c. (p. 174. l. 6.) i. e. the disquisition of the topic. The Author indicates the nature of the purpose : Ato niyamātikrama iti (p. 74. l. 6.) *therefore, a breach of the restriction* &c. (p. 178. l. 7.) The meaning of the text dealing with the aforesaid purpose has been explained by the Guru. The Author states that meaning, beginning with *Aya chārtha evaṃ vivṛta* (p. 74. l. 7.) *and the meaning of this passage is thus expounded* &c. (p. 175. l. 7.) and ending with *Puruṣaśyalwa niyamātikrame na doṣha*<sup>1</sup> (l. 8.) *would not affect the man if he deviates from the rule* &c (p. 115. l. 15.)

This is the meaning in substance : According to the objector, there is no fault if a man deviates from the rules ; but, by means of the wealth acquired in deviation of the rules a *Kratu* would not be accomplished. So there would be a defect in the *Kratu*. According to the demonstrated conclusion, however, as the rules relate to *Puruṣārtha*, any deviation therefrom would mean a fault of the man ; but there would be no defect in the *Kratu*.

The Author states the meaning of the net result : *Niyamātikramār. Itasyāpīti* (p. 74 l. 10) *even what is gained by infringing restrictions etc.* (p. 174 ll. 19-20). *Anyathā kratustidhyabhāwādīti* (l. 11.) *otherwise there would be no completion of a religious ceremony* &c. (p. 124. ll. 20. 21.) Otherwise in the case of property acquired by infringing the restriction, there being no ownership, and the restrictions being (in-

tended) in relation to a religious ceremony the ownership also being non-temporal, owing to the absence of a worldly ownership, even living would be difficult, and therefore on account of the absence of the performer, there would be an absence of the *kratu* also. This is the meaning.

The Author now anticipates an objection : Indeed if there be ownership even in acquisitions made by infringing restrictions, then it would happen that there would be ownership even in acquisitions by theft &c....and refutes it : Na chaitāwatetyādīnā (l. 12.) Jñāteṣhu Jñāyate swāmīti (l. 18.) *from what has been said below, it would not be &c.* (p. 175. l. 22.); *if they are known, he becomes proprietor &c.* (p. 170. ll. 2-3). The clause 'if these reasons exist follows. The meaning is if these reasons are known' (to exist) he is known as the proprietor.

The Author extends the rule propounded to another case also : Evamanulomajānāmapityādīnā (p. 74. l. 24.) *Thus ...in the case of mixed classes in the case of direct...order &c.* (p. 176. ll. 17-20.)

The Author anticipates an objection viz. under the texts 'the wife the daughters' and the like, in the absence of the owner by propounding the ownership of the wife and the rest, these texts run counter to the temporal character of ownership,—and so he refutes it by Yadyapi patnī duhitaraschetyādīnā (p. 74. l. 24.) *As for the precept.....the widow and the daughter &c.* (p. 176. l. 26.)

The Author now pursues the argument with a view to refute the objections raised by the objector in connection with the temporal character of ownership : Yadyapi mama swāmīti (l. 26.) *As for.....my property &c.* (p. 177. ll. 1-2). This is what comes to be said : If property be temporal, it could not be said 'my property has been taken away by him' since the ownership becomes of the trespasser himself. If it could be said, then when it is alleged 'my property has been taken away by him', a doubt may arise among the assessors. That does not hold, just as would be in regard to the form of the gold and the like.

The Author refutes it by Tadapyasat (l. 27) *that is not accurate &c.* (p. 177. l. 3). This is the meaning:—In a place like this, a mere cognition arises that a thing owned by another has been taken by him. It is cognition based on the strength the statement of the informant ; it is not

1. The Mātakaśharū reading is दृतेषु जाते स्मार्ति.

2. P. 46. l. 17. for दृतेषु read दृतेषु

certain<sup>1</sup> knowledge. Moreover, on account of the conflict, a doubt<sup>2</sup> is produced whether this was taken away by him or obtained by purchase and the like (means). And, thus, owing to a doubt regarding the causes of ownership by purchase &c. even if ownership has been produced as a result a doubt occurs.

Indeed, the temporal character of ownership has been well explained (by you). Still it is improper in the chapter on distribution where (the discussion as to) the temporal and non-temporal character of ownership is inappropriate. Anticipating this, the Author says: *Vichāraprayojan-twityādīnā japyena tapasālva chetyantena* (p. 74. l. 29). beginning with the purposes of the disquisition &c. (p. 177. l. 7.) and ending with by prayer and by rigid austerity &c. (l. 9.) While expounding the meaning of the text 'by a blamable act &c.' the Author points out its usefulness in both the objection and the established conclusion by *Śāstrāikāsamadhiḡamye* (p. 74. l. 30) if it be deductible only from Śāstra &c. (p. 177. l. 10).

It may be said, indeed, it is proper that the consideration of a desired subject should be in accordance with the object intended. If it be said that the consideration may also be in accordance with a different reason, then we do not see that different reason. For, is it the relation of cause and effect, or is it easy as in the maxim<sup>3</sup> of the needle and the kettle, or something else? There, (the answer is) not the first, the topic to be discussed not being contemplated by the worldliness of ownership, nor the second, as the worldliness can be established by a multiplicity of argument, and not the last, as it is not even seen. Therefore wishing to refute the objection that the considerations already made and to be made are misplaced, the Author takes up the consideration stated first: *Idānīmīdam<sup>4</sup> sandīhyata* III (p. 75 l. 2) next, it is doubted etc. (p. 177 l. 21).

This is the import: Partition also is a worldly matter, only the rules regarding it are non-worldly. Birth and the like are also worldly matters. And thus it is only when the worldly character of ownership

1. प्रतीतिः as opposed to प्रमिति

2. For कारणसंदेहो read कारणान् संदेहो।

3. सूचीकटादयाम् The maxim of the needle and the kettle or cauldron It is used to denote that when two things, the one easy and the other difficult, are required to be done, the easiest should be attended to यथा लोहकारं प्रति सूचीं कश्चित् कटारिणादुपार्थी ह्यामते, पश्चात्सूचदुष्प्रादुपार्थी प्राप तत्र लोहकारं यथम कर्तव्यमिति प्राप्नोति कटारं यदुष्प्रादुपार्थ्यपरिवर्ज्य पश्चात्कर्तव्यमिति प्राप्नोति स्वल्पावकालसाध्यां सूचीं यथमदुष्प्रादुपार्थी तथामेकेऽपदेऽप्युत्पादयेत् यथमपठितमपि इह ह्यप्य परिवर्ज्य मध्ये आगते वा पठिते स्वल्पे वक्तव्यं वाहयायते.

4. P. 45. l. 29. add इदमिदं संदिश्यते इति.

is established that its being produced by partition and like other worldly transactions holds, not otherwise. Therefore, The consideration of the worldliness included in ownership is the reason. This consideration therefore has a reason and therefore the inclusion of that in this consideration is proper. And from this very object is the statement 'next' &c.

Jātaputrasyādhānavidhānāditi (p. 75 l. 5) *since a man to whom a son is born is enjoined etc.* (p. 177 l. 27). The meaning is that since an injunction for maintaining the holy fire has been laid in the Śruti text "one to whom a son is born, with black hair, should consecrate the holy fires." The meaning of this clause is this : 'One to whom a son is born' i. e. one who has an issue. The word son is indicative, by an extended inclusion, of the issue. 'With black hair,' i. e. one in youth i. e. to say competent i. e. one thus entitled should consecrate fires.

Indeed, this text lays down a rule for consecrating and maintaining fires, and does not demonstrate that ownership arises by distribution. Anticipating this and desiring to maintain that it does intend that, the Author says *Yadi janmanaivetyādinā* (p. 75 l. 4) *if by birth alone etc.* (p. 177 l. 28).

The import is this : If ownership be by birth there being ownership in wealth of one by mere birth, and wealth being common property there would be want of the authority for acts like the consecration of fires which can be performed by the husband and wife alone

By the term 'Ādi'—etc.—. are included acts which must be performed such as the *Śraddha* and the like.

A prohibition necessarily contemplates things already existing, and therefore if ownership be taken to be by birth only, there would be no partition of an affectionate gift, and its prohibition also does not hold, so the Author says : *Tathā vibhāgāditi* (p. 75. l. 6.) *likewise...to separation &c.* (p. 177. ll. 31-32.)

Indeed, if there be wall then would painting pictures be possible, and a prohibition of that character would itself not exist. Anticipating this, the Author points out the prohibitory text: *Yathāha Śauryabhāryādhana iti* (p. 75. l. 7.) *as says, the gains of valour and the property of the wife &c.* (p. 178. ll. 1-2.)

Moreover, if ownership were by birth only, there would be the right of ownership existing of one immediately after birth, his permis-



sion being also impossible and wealth being common property, it being impossible for one to give, there would also be an absence of an affectionate gift, the text demonstrating an affectionate gift also would be contradicted, so the Author says: *Tathā bhartrā prītena Yaddattamityādīnā* (p. 75. l. 8.) *so what has been given by the husband when pleased &c.* (p. 178. ll. 4-5.) 3

Again it may be said, indeed, there is no contradiction with the text regarding affectionate gifts; on the other hand that text is even favourable. For the order of words should be taken thus—Excepting the immovables what has been given to the wife by the husband, when he is dead that she may enjoy at pleasure. And, moreover, by reason of the prohibition of an affectionate gift, ownership from the very birth having been established, and on the analogy of this a similar rule being induced as to other kinds of property, an affectionate gift of property other than immovable can become possible under the text, why then the text that it should not be done? Anticipating this, the Author says: *Na cha sthāwarādṛte yaddattamiti* (p. 75. l. 10.) *nor is...excepting immovable property...what has been given &c.* (p. 178. ll. 8-10). 10 15

The substance of the refutation here is this: If the order of words is thus, let it be so. By taking the order of words in this way there would be disjointedness, and the construction would not be straight, and this order itself does not hold, and so by taking the connection of the two clauses not in a disjointed manner alone a prohibition of an affectionate gift would occur regarding the immovables, birth is certainly the cause of ownership and not distribution. Anticipating this the Author refutes it: *Yadapi maṇimuktāprawālānāmityādīnā* (p. 75. ll. 10-11) *as for—of the gems, pearls and corals &c.* (p. 178. ll. 11-13). This is the import: By reason of acquisition, what has been acquired becomes the property of the acquirer. That, moreover, becomes possible upon a partition of those connected with it such as the sons and the like, or by the death of the owner. There, when the owner is living, partition is the cause of ownership. When, however, the owner is dead, the death of the owner itself is the cause of ownership. There also this is another special point: when there is only one son or one grandson, the death of the owner is the only particular cause of (creating) ownership; in a multiplicity of sons and the like, by the death of the owner, it becomes the common property; and by partition, of each individual. In this state of things, upon the death of the owner the grandfather, before partition there is an absence of an individual right of the father, and 20 25 30 35

hence the prohibition about a freindly gift of the immovable property of the grand-father, and not of the self-acquisition, since birth itself is the cause of ownership.

It may be said, indeed what is this disparity in the interpretation in the grandfather's immovables a general common ownership, while not so in the gems, pearls &c. Anticipating this and wishing to propound an answer that this is controlled by a (special) text, the Author says *Atite pitāmahe* (p. 75. l. 13) *after the grand-father is dead &c.* (p. 178. l. 18.) Since the death of the owner also is the cause of ownership, hence also after the demise of the father and before partition that property is not treated with indifference as if it were the property of some one else, so the Author says : *Ata eva piturūrdhwamiti* (l. 15). *pitṛprayāṇāditi* (l. 17). *Accordingly after the death of the father &c.* (p. 178. ll. 23-26);— *by the father's departure* (l. 28). i. e. the father's demise.

To the objection thus laid, the Author enunciates a reply: *Atrohchyata iti* (l. 4) *to this the answer is &c.* (p. 178. l. 30.). The Author cites the text of Gautama for (the view that) ownership (is) by birth, *Tathā chotpatyaiveti* (l. 19.) *likewise...by birth simply &c.* (p. 179 l. 31.). The meaning is that as ownership of wealth occurs by birth, he obtains that wealth.

The text 'of the gems, pearls and corals &c.' fits in only with the view of the conclusion; intending this, the Author says : *mañimukteti* (l. 20.) *of gems, pearls &c.* (l. 5.).

What has been stated by the objector that the whole of this text is applicable to another meaning, is not correct so the Author says : *Na cha Pitāmaheti* (p. 73. l. 21.) *nor...that from paternal grand-father &c.* (p. 179. ll. 5-8.) This is the import : The demise of the owner being also regarded as a cause of ownership, after the demise of the grand-father, his property being the common property of the father and the son, under the text "the gems, pearls and the like" are father's, but as to the immovables their interest is common. Thus, if this meaning is deducible from that text, then the adjustment stated before can hold; but it is not so. Therefore it must be thus stated: Even while the grandfather is living there is common property of all in the immovables. And then this text would be inappropriate as referring to the immovables that devolved from the grandfather.

Anticipating an inquiry as to how it could be inappropriate the Author states a cause: *Na pitā na pitāmaheti itī wachanāditi*

(1. 20.) *since the text expresses 'neither the father, nor even the grandfather' &c. (p. 179, ll. 8-9.)* The meaning is that if the text relating to the immovables has a reference only to the acquisitions from the grandfather, then while he is living, the text stating the absence of ownership in the<sup>1</sup> self-acquisitions is inappropriate.

The Author points out that the two texts viz. gems, pearls &c. relate to the right of ownership by birth : *Pitāmahaśya hiti (l. 22) that the grand-father's &c. (p. 179 l. 9).*

When ownership is by birth the right of ownership being common to all, how can there be an affectionate gift of this (common) property ? Wishing to propound an answer that it would be from the prohibitory<sup>2</sup> text, the Author says: *Paramata ityādina (l. 23) according to the other opinion &c. (p. 179 l. 11).* This is the import : Excepting immovables, things acquired by self can be given through affection by the father even without consent equivalent to permission.

Indeed, if it be so, then by propounding an affectionate gift of the immovables also it may be said that there would be a contradiction with the text of Viṣṇu, so the Author says *Yattu bhartrā pritenetyādī Viṣṇu-wachanamiti (p. 75 l. 25).* *As for the text of Viṣṇu—by the husband when pleased &c. (p. 179 ll. 17-18).* This is the substance: As regards immovables even if self-acquired, without the consent of those competent<sup>3</sup> to give consent or deserving of consent, there is no right to give. As regards others no consent is necessary. The Author states the reason for thus interpreting the text of Viṣṇu : *Pūrwoktairiti (p. 57 l. 26) by the texts above cited &c. (p. 179 l. 21).*

What has been said (above) that one to whom a son is born may not have a consecrated fire, there the Author says: *Yadapyarthasūdbhye-ṣhwiti (p. 27.) as for...which require for their accomplishment wealth &c. (p. 179. l. 25.)* The meaning is that the authority is from the text.

What has been stated<sup>4</sup> from a general text that in regard to immovables, self acquired as well as acquired by the father, the father is dependent upon sons and the like, is qualified by a particular text, so the Author says : *Asyāpawādaḥ ekopi sthāware kuryādityādina (p. 76. l. 1.) An exception to this. Even a single individual may conclude...of immovables &c. (p. 180. ll. 13 40.)*

1 on p. 48. l. 3. add after एतेषामिति add तस्य.

2 v. l. दक्षिण्यम्.

3 There is a mistake in the print here. read thus एतन्नाश्वयजुर्वाङ्मनोऽप्युक्तम्.

4 V. L. ३६.

Indeed to the text "Even a single individual may conclude...of immovable property" an exception is seen in the text "separated or unseparated". Anticipating this the Author says that this text does not entirely obstruct the authority of one individual for gift and the like, and that a gift and the like transaction would not be complete without the consent of the undivided as the property is common. Without the consent of the divided, however, gift and the like transactions are accomplished, but their consent is mentioned only for facility of transactions by the donees and the like, and so the Author proceeds :  
 10 Yattu wachanam vibhaktāwetyādīnā (p. 76 l. 4-5). *As for the text separated or &c.* (p. 181. l. 5).

It has been stated that "land passes by six ( formalities )". Of these six, desiring to indicate the use of the six in order, the Author first shows the reason for the consent of the townsmen: Tatrāpi grāmā-  
 15 numatirityādi (p. 76 l. 9.) *even there the consent of the townsmen &c.* Thus in their order the use of others should be noticed in the book itself.

Having before put together for the exposition of the chapter 'at what time', 'of what', 'how', and 'by whom' should a distribution be made, the portion 'of what' has been demonstrated at great length. Now  
 20 desiring to expound the other parts, the Author introduces the original verse by Idānim Yasmin Kāla Iti (p. 76. l. 17.) *now at what time &c.* (p. 182. l. 16 ).

### Yājñavalkya Verse 114.

Intending that in the expression 'sons' the plural number is not particularly intended, the Author says Putram putrāu putrāniti (p. 76. l. 20). *One, two, or more sons &c.* (p. 182. l. 25.) Of the text of Manu viz. "The additional share for the eldest shall be one-twentieth" &c. the Author himself will expound the meaning<sup>1</sup> viz. 'The sons should divide &c.—(after) the parents &c.'

The Author states the import of the word *Wā* (either) in the text of the Yogīśwara "Either (separate) the eldest with the best share." Wāśabdo wakṣhyamāṇapakṣhāpekṣha iti (p. 76. l. 25) *The term either (wā) is relative to the subsequent alternative &c.* (p. 183. l. 3).

It should be seen that by the text 'if the father makes a partition' a partition takes place even while the father is living at the father's  
 35

1 V. L. दृष्टान्तिना साधारणतया दृश्यते.

2 In (the commentary on) verse 117.

pleasure has been included the inquiry 'at what time a partition'? By the word 'father' is included an answer to the question 'by whom'? And by the text 'either...eldest with the best share' has been shown 'how'?

Four periods for a partition of *property acquired by the father*: Thus while the father is still living, when the father desires a partition, that is one period; when the mother has ceased to menstruate and the father is disinclined to carnal pleasures and is indifferent to wealth, then even while yet the father is living and although when the father is not willing, but the son desires, that is another (period); the next is after the demise of the father; and when even yet the mother is menstruating and even when the father is unwilling, but when he has grown old or behaves contrary to duties, or is suffering from an incurable disease, even when he does not desire but if the son desires, is the last. 5 10

PAGE 49 There, presently, the Author states about the first period: Vibhâgam Chet pitâ Kuryâditi yadâ pituriti (p. 76. l. 28.) 15  
*under the text if the father make a partition &c, when the father &c.* (p. 183. l. 10.) The Author indicates the second: Aparô jîwatyeweti (l. 29.) *another-even-when living &c.* (p. 183 ll. 11-13.) Atrâ putrâh samam dhanam vibhajeyurityanuṣhajjyata iti (p. 77 l. 3.) *the words let the sons divide the wealth equally are understood &c.* (p. 183. 20  
11. 22. 23.) By the word 'here' is meant the aforequoted text of Nârada viz. 'when the menstruation of the mother has ceased &c'.

The Author points out the first, second, and third methods in an inverse order: Gautamenâpîti (p. 77. l. 3.) *by Gautama likewise &c.* (p. 183. l. 23.) The Author mentions the fourth: Tathâ sarajaskâyâmapityâdinâ (p. 77. l. 2.) *so when the mother is capable of bearing more issue &c.* (p. 183 ll. 26. 27). From here the exposition of the entire verso is easy. 25

Above have been pointed by the Author of the commentary four periods for a partition for the sons. These have been incorporated two-fold by the Yogîṣwara 'when the father is living &c.' There 'when the father is living' three occasions are possible. These are as under: At the father's desire. Even when he does not desire the period is when the mother has ceased to menstruate and the father has become disinclined to pleasure and the like is one, and when the mother has not ceased to menstruate, but the father is given to acts against *Dharma* and the like is another. All this has a reference to the maker<sup>1</sup>. The rule as to the mode, moreover, has been sufficiently pointed out by the text 'If the father makes a partition &c.' 30 35

The Author now introduces texts laying down the time, the makers, and the mode of partition, after the demise of the father : Idānim vibhūgasya Kālāntaramiti ( p. 79. l. 1. ) next another period of partition &c. ( p. 186. l. 20 ).

### 3 Yājñavalkya Verse 117.

The Author points out at details the nature of the rule itself Samameveti ( p. 78. l. 4 ) equal only &c. ( p. 186. l. 30 ).

10 It may be said, indeed, under the texts of Manu and others laying down the rule as to an unequal partition, an option as to an equal or unequal partition is just, and a restriction that it must be equal does not hold : Anticipating this, the Author says : Nanūrdhwamityādīnā samameva vibhajeranniti niyamyata ityantena ( p. 78. l. 4 ; ll. 15-16 ) Beginning with *but after the death* &c. ( p. 187. l. 1. ) and ending with a restriction introduced requiring that ' sons should divide only in equal shares ' ( ll. 26-27 ).

15 'Even though permissible under the law, if abhorred by the people, one must not practise it, since that will not procure the celestial bliss,' thus has been stated a reason against an unequal partition. There, the Author points out an illustration from the *Smṛitis*: Yathā mahokṣaṃ weti ( l. 18. ) as e. g. a big bull &c. ( p. 188. l. 1. ). The Author points out an instance from *Śruti*: Yathā maitrāvaruṇīti ( l. 19 ) as...consecrated to Mitra and Varuṇa &c. ( p. 188. l. 4. ). The meaning of this: consecrated to the deities Mitra and Varuṇa a barren cow i. e. who is incapable of yielding progeny should be slain as a victim.

25 The Author points out a text prohibiting an unequal partition and accompanying the instances from *Śruti* and *Smṛti* already stated : Uktam cheti ( l. 20 l. 9. ) it has also been said &c. ( p. 188. l. 5 ). Its meaning: 'Another' i. e. the rule regarding 'appointment'; 'the injunctive rule' i. e. one laid down in an injunctive text such as about the slaughtering of a big bull or a great goat, also about the slaughter of a barren cow as a victim, as this Rule does not exist ( now ) so an unequal partition also does not exist.

35 Deśavilāṣhe suvarṇaṃ Kṛṣṇā gāva ityādi ( l. 23 ). in particular countries, gold, black cows &c. ( p. 188. l. 15 ). The meaning of this : In a particular country, gold, black cows, and the black produce from land, i. e. grown up in the land, such as the corn of barley &c. Some understand by 'black produce of the earth' as 'black iron'.—This

is for the eldest son : The father's chariot, furniture in the house—i. e. such furniture e. g. articles, such as a chair<sup>1</sup> &c. so also an ornament worn by the wife, as also property as may have been acquired from relations, as from the father and the like, that property becomes the share respectively of the eldest son, and of the fathers' wives. Thus has 5  
Āpastamba pointed out himself. This is the meaning.

Manuḥ putrebhyo dāyamīti ( p. 78. l. 26 ). *Manu...heritage among his sons* &c. ( p. 138. l. 21 ). The meaning of this : By Manu is meant generally.

Even if there be a residue from the property of the mother, sons 10  
have no right while the daughters are living, and therefore their non-liability for the mother's debts and the mother's property whether equal to or less than the debts incurred by the mother is not subject to the rule in the text "Sons should divide after the father &c." Intending this the Author says : *Ataśchṛṇasamamīti* ( l. 30 ) *hence...equal to...* 15  
*debts* &c. ( p. 189. l. 5 ). As the residue of the mother's property after ( the payment of ) debts is not liable to partition when the daughters and the like are living, so when there are no daughters, that property even if equal to or less than the debts is not liable to partition. This is the meaning. 20

*Prattāpratteti* ( p. 79. l. 6 ). *Married and unmarried* &c. ( p. 189. l. 19 ). *Prattā* i. e. *married*. *Aprattā*—*maiden*.

### Yājñavalkya Verses 118 and 119.

PAGE 50 The Author supplements the text of Śankha, viz. " Land which had been formerly lost &c." *Kramādabhyāgastamīti* 25  
( p. 79. l. 21 ). *in regular succession inherited* &c. ( p. 190. l. 25 ). Here the expression 'in regular succession' is the very one in the text of Śankha and inherited is alone the word which is supplemental.

Intending to indicate that the portion in the original text 'without detriment to the paternal estate' is the supplement of all the kinds of property included in the text as not liable to partition such as 'a grant from a friend' and the like, the Author says *Atra Pitṛdrawyāwīrodh-* 30  
*neti* ( p. 79. l. 24. ) *here the expression "without detriment to the paternal estate"* &c., ( p. 191 l. 3-4 ). This, moreover, is an extension<sup>2</sup> by implica-

1 पतिवस्त्रं.

2 उपलब्ध implying something which has not been actually expressed, implication of something in addition of any similar object where only one is mentioned. एवमित्यादिभिरिति एवमित्यादिभिरिति

tion. It should be understood that whatever has been stated even in other *Smṛtis* as impartible, of all these properties this is the supplement by implication.

By reason of the impartibility of properties predicated by the expression 'without detriment to the paternal estate', as by deduction gifts from friends and the like kinds of properties, when acquired with detriment to the paternal estate, become liable to partition, so by reason of not being included in friendly gifts and the like, property which is obtained as a gift, even though obtained without detriment to the paternal estate, is liable to partition; so the Author says: *Tathā piṭṛdrawyāvirodheneti* (p. 79 l. 28) *moreover without detriment to the paternal estate &c.* (p. 191 l. 16-17).

If the expression 'without detriment to the paternal estate' were not regarded as a residual supplement of the friendly gifts and the like, then the following meaning would be deduced viz. 'whatever is obtained without detriment to the paternal estate, is not liable to a division. And by this exposition of the text the indivisibility generally even of the friendly gifts and the like having been established, a mention again of these viz. gifts from friends, nuptial presents &c. as impartible would be improper, so the Author says: *Asya cha Sarvaśeṣatwābhāvaḥ* (p. 79 l. 30) *But if that were not understood with every member of the text &c.* (p. 191 ll. 19-22).

It may be said, indeed, the text begins with gifts from friends and the like as showing that gains are not liable to a partition even though obtained at the detriment of the paternal estate. Anticipating this the Author says, *Atha piṭṛdrawyāvirodheneti* (p. 79 l. 30) *It may be said (obtained) at the expense of the patrimony.* The Author refutes it as it would be opposed to the authority such as the usage of the good (*Sigṭhas*) &c. *Tathā Satitl* (p. 80 l. 1) *were it so &c.* (p. 192. ll. )

Indeed, this is improper, as relatively usage is (of) weaker authority than a text. If it be said that even usage is (regarded as) authority as contemplating<sup>1</sup> a text, and not by itself, then even in this view also, text is authority. Even so, from as much of the *Smṛti* settled by usage the intended point is supported from so much of the *Smṛti* viz. such as 'gifts from a friend, nuptial gifts' and the like, the intended result being obtained, if it be argued, by reference to the rule as to dependent and

1 वचन कल्पयन्नेव आचारोऽपि प्रमाण. Mark this. The origin of usage is also under a supposed authority from some text.



independent sources, that usage alone is weaker, the answer is, not so. This state of things is inevitable—this of suppression. A weak is not suppressed simply because it is weak, but when there is opposition. And an opposition occurs where in regard to the same subject mutually contradictory statements are made. In such a case under the maxim 5  
 ‘when a construction is possible without opposition, an opposition is not proper’, the interpretation of the text “gifts from friends, and nuptial gifts” according to the mode stated by us alone being without “contradiction to the usage of the good” an opposition by imagining any other meaning is improper. Thus it has been well said: *Samâchârawirodha* 10  
*iti* (p. 80 l. 8.) *inconsistent with well-established usage &c.* Thus every thing is unexceptionable.

Not only will it be inconsistent with well-established usage, but it would be opposed to the text of *Nārada* also in regard to wealth obtained as gains of science enumerated along with gifts from friends 15  
 and others of that class; as the Author says *Vidyâlabdha iti* (l. 2). in regard to gains of science &c. (p. 182. l. 4.)

This is the meaning of the text of *Nārada*: While a brother is prosecuting his studies for knowledge, another brother of his supports the family, the supporter shall get a share in the wealth obtained from that knowledge, even though he be not learned. The purpose is that 20  
 here on account of the support of the family having been mentioned as a reason for participation in the wealth, the participation of a share in the wealth gained by science is due to a special cause and not in due course in his capacity as a brother, and so the wealth known as the gains of science is not by itself liable to partition, and hence its impartibility. 25

By the text of *Kātyâyana*, it is only gains of such science as was obtained with food and substance from others than the father and the rest, that is not liable to partition; in the case of wealth obtained as gains of science it may be said that there would be a contradiction to 30  
 this text also, so the Author says: *Tathâ vidyâdhanasyeti* (p. 80. l. 3.) *Moreover, of wealth as being acquired by learning &c.* (p. 192. ll. 6-7.)

Of the text of *Kātyâyana*, the following is the meaning in substance: That wealth which was obtained by means of the learning which was acquired without detriment to the paternal estate, is the wealth of this character and none else. Such kind alone is not liable to a partition. 35  
 Gains of learning other than this, however, are verily not gains of learning and are certainly partible.

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If the expression 'without detriment to the paternal estate' be taken as not applicable also to others than gifts from friends &c. the Author mentions another fault: Tathā plīdrawyāvirodhenetyasya bhinnawākyatve iti (p. 80. l. 5.) Moreover, if the expression 'without detriment to the paternal estate' be taken as a separate clause &c. (p. 192. ll. 10-12.) This is what is (intended to be) said: When the portion 'without detriment to the paternal estate' is (taken as) independent and not as a supplemental addition to gifts from friends and the like, then it being established that whatever is obtained without detriment to the paternal estate is not liable to partition, and only things being regarded as obtained as a gift which are obtained by the acts of donation and of acceptance only without any stipulation whatever gains obtained by donation having been obtained without detriment to the paternal estate, these also may be (regarded as) not liable to partition and in that case it would be contrary to the well-established usage.

Manu has made it clear that the clause 'without detriment to the paternal estate' is a supplement of the 'gifts from friends' and the like. So the Author says, Etadeva Spashtikṛtamiti (p. 80. l. 8) *This very thing has been made clear &c.* (p. 192. l. 13).

This is the meaning of the text of Manu: Without using the patrimony, what one acquires by labour, learning, what is obtained is *labdham* or wealth obtained. Or, without using the patrimony what one acquires by labour, what is obtained by learning acquired by using the patrimony—would be an order of words by a change of the case<sup>1</sup>. These two also one should not give to the co-heirs. And thus the meaning is that by the use of the patrimony, acquisition of wealth by learning or the like being connected through the acquirer as the adjective and the clause qualifying it, what has been obtained without detriment to the paternal estate as gains of learning or by labour, is not liable to partition. Moreover, this extension by implication is similarly so in the case of gifts from friends and the like, as the gains of learning enumerated along with it are regarded in that manner.

It may be said, indeed, in the property of the grandfather, as also of the father, the ownership of sons and the like is by birth itself, and not in the property obtained<sup>2</sup> from a brother, and therefore in the case of property obtained from a brother, a friend, or the like, what was acquired

1 i. e. from the nominative case into the instrumental.

2 This may also mean acquired by brothers. But the translation given fits in with the context.

ed by one is his property only, and thus in the case of such property there being no partition (at all), the prohibitive rule that gifts from a 'freind and the like are not liable to partition' is inappropriate. Anticipating this, the Author says *Nanu Pitṛdrawyâwirodhenetyâdinâ* (p. 80. l. 8.) *Indeed...without using the patrimony &c.* (p. 172. l. 17.)

With a view to condemn the opinion of a certain writer the Author points out a liability to division according to his view : *Atra Kaśchiditi* (p. 80. l. 9.) *Here, a certain writer &c.* (p. 193. l. 2.) The Author points out the text leading to a division: *Yatkinchit pitari preta iti* (p. 80. l. 10.) *Whatever...after the father's death &c.* (p. 193. ll. 3-4.) The Author points out how this text leads to a division : *Jyeshtho wâ Kanishtho weti* (l. 11.) *if the eldest or youngest, or &c.* (p. 193. l. 6.) : This is the meaning: In the clause "property the eldest acquires", the word eldest does not particularise its own meaning ; for the word eldest is indicative of the middlemost and the youngest also. Similarly in the clause "a share to the younger brother" the word younger, although expressive of the youngest, is also indicative of the eldest. So also the clause 'after the father's death' although indicative of a time subsequent to the father's death, is indicative of the subsequent as well as of the prior time. Thus this text being capable of meaning that by an extension of the word 'eldest' &c. whatever property the eldest, or any other obtains as a gift from a friend and the like, from that property, a share exists in favour of the youngest or the eldest while the father is living or dead, if they maintain learning i. e. are learned, by this (interpretation) of the text "whatever...after the death of the father" even gifts from friends and the like being liable for a division that has been prohibited by the Yogîswara by the text "without detriment to the paternal estate &c."

It may be said that the text "without detriment to the paternal estate" is only an explanatory repetition of the non-liability for a partition of the gifts from friends and the like as established by long-continued usage, and not as a prohibition' which contemplates its previous existence, so the Author refutes by *Tadasat* (l. 13.) *that is erroneous &c.* (p. 193 l. 11.)

1 अविच्छिन्नस्यार्थः The स्यार्थ of ज्येष्ठ is eldest. The meaning is, the word ज्येष्ठ is only indicative of other sons also.

2 अद्वयत् and प्रतिपत्. See notes in the Mitāksharâ सिद्धसाधनम्: An अद्वयत् is only a repetition by way of explanation of what has been established.

Or even granting that it is a prohibition, still that is because of another text, not by what you say, so the Author says Athawā Samawetaistuiti (p. 80 l. 14) or by them in concert &c. (p. 193 l. 18.)

5 The Author points out the proper interpretation of the text "whatever.—after the father's death &c": Ato maitrādiwachanañriti (p. 80. l. 16). Therefore—from texts concerning gifts from friends &c. (p. 193 l. 1. 20 22). The meaning is that under the text of the Yogiśwara such as 'without detriment to the paternal estate' and the like  
10 the non-liability of 'the gifts from friends' and the like whether before or after the father's death being established, under the position that the text "whatever—after the father's death from the property acquired by the eldest son after the father's death, such as gifts from friends and the like, the younger sons if learned will get" stands refuted.

15 PAGE 52. The Author expounds the text of Manu' viz. 'clothes, vehicles, ornaments &c'. Dhṛtānāmeva wastrāṇāmityādīnā (p. 20 l. 19). beginning with only to clothes which are worn &c. (p. 194. l. 1. 3-4). Vaiśhamyenāwibhāṇiyatwe iyeṣṭhasyeti (l. 23) If there cannot be a division on account of the unevenness of the number  
20 they belong to the eldest &c (p. 194 ll. 16-18). Here the clause about unevenness refers to the commensurate character of the share and not to its unevenness. And this is proper. Three horses and three sons make the share commensurate, and these may be completely divided. With four horses and sons three or five, owing to the incommensurate  
25 nature of the horses it being impossible for the shares to be distributed in conformity to their extent<sup>1</sup>, and a division by (a) money (value) being prohibited, and a rule being laid down for being given to the eldest alone after dividing the horses &c. such as are commensurate with the shares, the balance remaining on account of the incommensurateness, whether  
30 of horses or the like other things, should be given to the eldest alone. In this chapter, the unevenness is to be understood in this manner only.

35 Yaś Stribhīralankāro dhṛto bhavet ( p. 80 l. 27) such ornaments as are worn by women &c. (p. 194 l. 23). Here the expression 'by women' is only indicative. Therefore, the general reference by 'that which was worn by each person' is not opposed. And thus in the expression 'during the life-time of their husband' the word husband means 'master' i. e. the father, or the like.

1 Ch. IX. 219.

2 अन्वयः l. e. in the intrinsic extent of the shares themselves.

The Author points out a text of Gautama laying down the indivisibility of the women under the protection of the father such as the *Swairiṇis* and the like, although even (in number): *Strishu cha samyuktāswiti* (p. 80. l. 32). *also of women connected i. e. consummated i. e. to say the women under protection &c.* (p. 195. l. 7). With the text 'without detriment to the paternal estate' whatever else is acquired by man, the *Yogīśwāra* began the nonliability for a partition and that when expounded in one place by the method of affirmative and negative reasoning becomes easily understood, and so the Author mentioning that which will be stated later, reminds of what has been stated already: *Pitṛprasāda labdhāsyāwibhājyātvam wakṣhyata ityādīnā* (p. 81. l. 9.) *what is obtained through the father's favour will be subsequently declared &c.* (p. 196 ll. 78). The affirmative way is the exposition of the nature of property not liable to partition; the refutation of impartibility is the negation.

*Yena Chaṣṣhāmīti* (p. 83. l. 11.) *if (any one) among them &c.* (p. 196. l. 14.)

### Yājñavalkya Verse 120.

*Anekapitṛkāṇāmīti* (p. 811. l. 17) *by different fathers &c.* (p. 196. l. 29). Of different fathers *i. e.* of several fathers, *i. e.* to say of brothers' sons. *Pramītapitṛkāṇāmīti* is also another reading.

*Na swarūpāpekṣhayeti* (p. 81. l. 19) *not with reference to themselves &c.* (p. 197. l. 4). *i. e.* not in their capacity as son's sons. *Keṣhu Chitputreṣhu dhriyamāṇeṣhu iti* (p. 81. l. 22.) *if some of the sons be living &c.* (p. 187. l. 10). 'Living' *i. e.* in existence, that is to say, in life. (vide the rule of grammar under which) the root *dhru* means 'to continue.'

It may be said, that by the text "among claimants by different fathers, the allotment of shares shall be by regard to the fathers"<sup>2</sup> the following result has been accomplished: The grandson's obtaining the property of the grand-father, is through the father. There also only if the father had died unseparated. In such a case when the father is living and is also separated from his own father, or being the only son and not having any brother has remained unseparated from his father, then,

1 Yajñ. II. 123.

2 For दृष्टव्यमिति: read दृष्टव्यमिति The word मिति has the peculiar significance of reaching or arising. Here it means connection.

in the first case, on account of his being separated from his father, the father<sup>1</sup> does not get the grand-father's wealth; and he being<sup>2</sup> alive, the grand-son does not obtain the grandfather's wealth, as the door<sup>3</sup> is blocked. In the second case, although by reason of his being unseparated the father obtains the property, still by the very fact of the father being alive the grandson does not obtain the grandfather's wealth. Therefore in the property of the grandfather the grandson whose father is living does not get a share. Or even granting that he has a share, ownership being from the very birth, still even if the father be dead the share having been laid down as through<sup>4</sup> the father only, much more would it be so when he is living and thus it being settled that the father is the principal, a share can be obtained only with the father's pleasure.

Even there by reason of the text<sup>5</sup> 'Two shares let the father keep for himself when making a partition' the father would have two shares. With a view to introduce the next verse the Author states this objection by anticipation: *Adhunā vibhakte pitarit̥yādīnā* (p. 81. l. 25). *Now the father being separate &c.* (p. 117. l. 15).

### Yājñavalkya Verse 121.

Here the expression 'of the grandson' is indicative of two or more grandsons. *Nibandha ekasya parṇabhārakasyeti* (p. 81. l. 26) *corrody i. e. from each bundle of leaves &c.* (p. 117. l. 27). From one garden<sup>6</sup> of leaves so many leaves. Similarly from an orchard of betel trees, so many betel leaves, as expert dealers in these know for that which is definitely fixed, e. g. by the number of leaves or the like is a *corrody i. e. a bundle of leaves*. It is derived from the root भृन् to fill with the कृत् termination ending.

1 Here the statement in the Subodhinī is rather not lucid as usual. The matter has been put clearly in Bālabhāṣā thus: तदा विभक्तवदेष वेतामहद्वयमात्रवात् स्वपितुर्भक्तवत् तस्य तस्याश्च द्वारनिरोधेन पीतस्य वेतामहद्वयमात्रवशात्: (see Bālabhāṣā p. 151. ll. 13-14.)

2 Another reading is जन्मिषमात्रवाद्, which does not suit; see also Bālabhāṣā in the last note.

3 V. L. दृश्य; this is a better reading and has therefore been adopted in the translation. उद्धारस्य if adopted would mean the share from the grand-father's property. 4 For विद्वापत्सविधानात् read विद्वापत्सविधानाद्.

5 Nārada. Ch. XIII, 12. 6 There is a mistake in the print; read वाटिका for वाटिका.

PAGE 53 Pratigrahaviḥayādīnā labdhamiti (p. 82. 1. 2.) such as was acquired—through acceptance of gifts, or by conquest &c. (p. 198. 11. 134). By the word *Ādi*, &c. are included, merchandise, service of the twice-born, and the like.

Since thus the ownership of the father and the son is equal in the popular view, there the rule that 'Among claimants by different fathers the allotment of shares shall be by regard to the fathers' is determined by the texts after the father's death, and not while he is living; so the Author says: *Ataścha pitṛto bhāgakaḥpaneti* (p. 82. 1. 4). *the allotment of shares shall be by regard to the fathers &c.* (p. 198. 1. 10).

The Author removes a (seeming) contradiction with another text *Vibhāgaṃ chetyādīnā* (l. 5) *when the...a partition &c.* (p. 198. 1. 13).

The Author states another peculiarity in regard to the grandfather's property (as distinguished) from the father's acquisitions: *Tathā cha Sarajaskāyāmityādīnā* (p. 82. 1. 8). *thus, while the mother is capable of bearing &c.* (p. 195. 1. 19).

It has been stated that the son has the right to object to an alienation by the father of the grandfather's property, but not in the father's; the Author explains that, introduced by a proper reason *Tathāhityādīnā* (l. 10). *consequently &c.* (p. 198. 1. 26). *Pitāmahārjitaṃ Akāmopi iti* (p. 82. 1. 16). *however reluctant...the effects acquired by the paternal grand-father* (p. 199. 11. 12-14). The meaning is, the property acquired by the paternal grandfather with the exception of that which has been stated before.

### yājñavalkya Verse 122.

*Mātṛbhūganchāsatyām duhitariti* (p. 82. 1. 22.) *the mother's portion, however, only if there be no daughter &c.* (p. 199. 1. 18.) Here the word *cha* is used in the sense of *tu*. The meaning is that when the daughters are living, he shall not get the mother's portion.

*Asawarṇāyāmutpannāstu swāmśameveti* (p. 82. 1. 23.) *but sons by women of different tribes, receive merely their own proper shares &c.* (p. 199. 11. 22-25.) A son of a *Brāhmana* from a *Kṣatriya* wife,

1 'Cha' is ordinarily used as a copulative conjunction meaning and. Some times it has a disjunctive significance and then it functions as *Tu*-however.

a share<sup>1</sup> less than a quarter, one born from a *Vaiśya* wife half a share and that born from a *Sūdrā* wife one-fourth of a share. In the same manner, one born from a *Kṣatriya* of a *kṣatriyā* woman receives three shares, one born of a *Vaiśya* woman a half, and one born of a *Sūdrā* woman one-fourth. One born from a *Vaiśya*, of a *Vaiśya* woman two shares, and one born of a *Sūdrā* woman a fourth. And this very rule he will state further on in the text 'Four, three, two shares &c.'

*Mātṛkan tu sarwameveti* (p. 82. l. 23.) as for the mother's property, the whole of it &c. (p. 199. l. 22.) Here also subject to the rule 'if there be no daughters' as under the text "of the mother's (property) the daughters (shall take) the residue" is meant the residue of the entire property of the mother.

A son born of a woman of the same *Varṇa* after separation, is entitled after the death of the parents to get their property. The Author cites the text of Manu in support of this: *Etadeva Manunoktamiti* (p. 82. l. 23.) *The same rule is propounded by Manu* (p. 124. l. 1.).

The Author expounds the term 'parental' after treating it as an *Unī-residual*<sup>2</sup> compound: *Pitrōridamiti* (p. 82. l. 94.) *appertaining to both father and mother.* (p. 200 l. 3.)

It may be said, indeed, whether it is treated as an *Ekakṣha* or not, it is to be understood as parental, then what is the motive in making it *Ekakṣha*? So the Author says *Aniṣaṇ pūrwaja iti* (p. 63 l. 25) *a son born before.... has no claim* &c. (p. 100 l. 4). The meaning is that because here the reference is in a dual number as 'of the parents'.

The Author explains the text 'a son born before has no claim on the wealth of his parents': *Mātāpitroriti* (l. 25) *to his father and mother* &c. (p. 200 l. 8) *Sanṣṛṣṭastena weti* (p. 81. l. 11) *or if they are any who are re-united with him* (p. 200 ll. 17-18)

### Yājñavalkya Verse 122 (2).

The Author states the meaning of the word 'allotment' in the text 'or his allotment must be made out of the visible estate': *Tasya pitari preta iti* (p. 83. l. 3) *subsequently to the death of the father* &c.

1 There appears to be some confusion likely to be created by the use of the words *अंश* and *वर्ग*—'Share' and 'quarter'. According to the rule stated in Yājñavalkya II. 125, sons born of women of the descending order by Brāhmaṇi Kṣatriyā; Vaiśyā, and Sūdrā take in the ratio of 4:3:2:1.

2 A species of *Dvandva* compound in which one only of two or more words (*एकदेश*) is retained.



## Yājñavalkya Verse 123.

The Author extends the rule, already stated, to other circumstances also: Tathā asatī vibhaktaja iti (p. 83 l. 18) *so when there is no son born after partition &c.* (p. 202 l. 15) This is the meaning: Not only is the  
 5 rule that even before partition the wealth which had been given by the parents to one belongs to him when a son is born after partition, but even when no son is born after partition, whatever had been given by the separated parents to their sons and the like, that property must be  
 10 regarded as the share of him to whom it was given, by those partitioning after the death of the father their property.

## Yājñavalkya Verse 124.

There being a difference of opinion among the commentators on the text "And the sisters also...of his own share", and the meaning  
 15 also being subtle, and intending to indicate that the interpretation which is about to be given by him is the only correct one and none other, the Author proceeds Asyārtha iti (p. 83 l. 29) *The meaning of the above passage &c.* (p. 204 l. 1).

Taking up here the text before stated viz 'the uninitiated however should be initiated' the Author expounds it Bhagīnyaschās-  
 20 sanskr̥tā (p. 83 l. 29) *and sisters also who are not married &c.* (p. 64 l. 2).

Some explain thus the clause 'and sisters also....of his own share'. It is like this: making as many shares as (there may be) brothers, from the share of each, a fourth part should be given to the sister. So, when there are two sisters, or even many, to each separately  
 25 must be given a fourth from each share.

Others, however, explain that after taking out a fourth portion from each share it should be given to the sister. When there are two sisters or many, then also the two or many even should take only the share taken out, and not a separate deduction.

Both these are not proper. For, according to the first, when  
 30 there is one brother and sisters seven or eight, then by giving a fourth share to each sister, the brother would become utterly destitute; if, one sister and many brothers, then by the brothers giving each a fourth of a share, the sister would be getting a portion greater  
 35 than a brother and in that case there would be a contradiction of the text prescribing a smaller share to a daughter than that of a son.

While according to the second view, the same fault as aforesaid would come about when there is one sister and many brothers. If there be, however, one brother and sisters seven or eight, the brother's share being one, its fourth part would be small, and a division of that into fractions would be an extremely negligible share and thus this cannot be contemplated by the text "by giving a fourth from each share". 5

Let it be so, still<sup>1</sup> there would be a contradiction to this text, while according to the manner which is being stated by us, even when a fourth share is established for each of the sisters, there would be no contradiction with the word (*Turiyaka*) fourth, while according to your view, there being an absence of that, it would be contradicted. In this way intending to refute the view of one side, the Author states his own view: *Tatra nijādamśāditāyānā śesham brāhmaṇīputrau vibhajya gṛhṇitetyantena* (p. 84. ll. 1-12.) beginning with *from his own share* (p. 204. l. 7.) and ending with *the two sons of a Brāhmaṇi wife shall equally divide and take* (l. 38.) 10 15

*Evam jātiwaiśhamye bhrātṛṇām bhaginīnām chetyādi* (p. 84.) Thus—of brothers and sisters of different castes &c (p. 205. l. 2). Thus when they are of different castes and the number of brothers and sisters is equal, the following rule should be observed: A son of a *Brāhmaṇi* wife and also a daughter, one son of a *kṣatriyā* wife and also a daughter, and similarly of a *Vaiśyā* as also of a *śūdrā* wife, in this way are eight children, four children being females and four males. Under the text 'Four, three, two and one' the shares of the children of the *Brāhmaṇi* are eight, of the children of the *Kṣatriyā* six, of the children of the *Vaiśyā* four, and of the children of the *Śūdrā* two, thus making twenty shares. To the *Brāhmaṇi*'s daughter from the share prescribed for her caste viz. four shares, a fourth from that her own share should be given, to the *Kṣatriyā*'s daughter, from the share prescribed for her caste viz. three shares, a fourth part should be given; to the *Vaiśyā*'s daughter from the share prescribed for her caste viz. two shares, a fourth part should be given; and to a *Śūdrā*'s daughter from the share prescribed for her caste viz. one share only, a fourth portion from that own share having been given, the residue of the property remaining from each share should be pooled together, and the sons from the *Brāhmaṇi*<sup>2</sup> and the rest should divide in the ratio of four, 20 25 30 35

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1 V. L. सवतु वा तद्वति तद्वचनितेय ।

2 The expression used here i e. ब्राह्मणादिपुत्रा. is not quite accurate although in the particular case i e. of a son of a Brāhmaṇi wife it may be correct; it should have been ब्राह्मणादिना पुत्रा.

three, two, and one and take. When, however, the number of the brothers and sisters is uneven, as many individuals as there may be of brothers &c. so many shares be imagined in the ratio of four, three, two and one, to the daughters should be given a fourth portion from each of the shares prescribed for the caste of each, and the balance of the property should be divided in the ratio of four, three, two and one, and then the brothers should take it. Thus should it be applied.

*Saṅskāramātropayogidrawyamiti* (p. 84 l. 16). *Money sufficient for her Saṅskāra* (p. 203 l. 4). *Saṅskāra* i. e. marriage. The Author expounds the text of *Manu* viz. out of their own allotments in the manner stated by him, *Asyārtha ityādinā* (p. 84 l. 18). *the sense of this passage* &c. (p. 205 l. 9.). The Author refutes the exposition of one view even in the explanation of the text of *Manu*. *Na chātrātmīyabhāḡāditi* (p. 84 l. 20). *and not from one's own share* &c.

Here also when they belong (p. 205 ll. 511) to different castes and there is unevenness in the number of brothers and sisters, the same rule holds as stated before; so the Author says *Jātiwaiṣhamye saṅkhyāwaiṣhamye cheti* (p. 84 l. 22). *when the castes are dissimilar, as also when the number is uneven* &c (p. 205 ll. 16 17).

It may be said that in the case of daughters, there is only an affectionate gift, and not a necessary obligation, so the Author says *Patitāḥ syuraditsava ityakaraṇa iti* (p. 84 l. 22) *those who refuse to give shall become degraded, thus refused* &c. (p. 205 l. 21).

Having expounded the text of *Manu* the Author states an objection: *Atrāpi chaturbhāḡawachanamiti* (p. 84 l. 24). *Here also the mention of a quarter* &c (p. 205 l. 23). The Author gives a reply: *Na Smṛtidwayepīti* (p. 84 l. 24). *no...in both the Smṛtis* &c. (p. 205 l. 28). 'In both the *Smṛtis*' i. e. the *Smṛti* of Yājñavalkya and also in the *Smṛti* of *Manu*.

*Aṅśadānawīwakṣhāyām bahubhrātrkāyām* (p. 84 l. 26). *in the allotment of a portion to a sister having many brothers* &c. (p. 205 ll. 30-32.) The meaning is in the discussion about the giving of the fourth portion stated in the text 'by giving them a fourth part' and also in 'a fourth part from the share of each.'

### Yājñavalkya Verse 125.

*Saṅkhyāikawachanātcha wīpśāyāmīti* (p. 85 l. 5.) *words denoting units of a coin in the singular number, when a distributive sense is to be*

expressed &c. (h. 207 l. 11). Of this aphorism of Paṇini this is the meaning: Of words denoting units, and in the singular number, and when a distribution is to be expressed the termination shall be *Śas*. An example of units is 'he gives two and two'; or 'he gives in two'. The Author points out the application to the present context by an illustration for the singular number *Adhikaraṇakārakāditi*<sup>1</sup> (p. 86 l. 5.) and in a locative case &c i. e. from the locative singular. 5

*Tatputrāṇām pūrvokta eva vibhāga iti* (p. 85 ll. 12,13). *partition among his sons takes place in the same manner as has been mentioned before &c* (p. 208 ll. 3 4). His sons i. e. of the *Śūdra* begotten on a *Śūdrā* wife, these are 'his sons'. Of these the partition as stated before' i. e. by the text<sup>2</sup> "If the father makes a partition" and the text<sup>3</sup> 'the sons should divide after the partition.' 10

Moreover, for this reason also let the sons of a *Kṣhatrīyā* and others have a share in land acquired by purchase and the like (method), so the Author says *Pratigrahaṇāditi* (p. 82 l. 16.) *since acceptance of donation &c.* (p. 208 l. 11). 15

By the force of the sense included in the expression (*pratigraha*) 'acceptance by donation', in land obtained by purchase &c. the sons of the *Kṣhatrīyā* and others have certainly a share; so the Author says: *Śūdrāputrasyeti* (p. 83 l. 15.). *For the son by a śūdrā woman &c.* (p. 48 ll. 13. 14.). *Śūdryāṇ dwijātibhirjāta iti* (p. 85. l. 17.) *the son of a twice-born borne on a śūdrā woman &c.* (p. 208 l. 19.). Here, by the expression 'an a *Śūdrā* woman' is meant not 'the wife of a *Śūdra*' but that on one's own wife, a *Śūdrā*. (For, a son borne on her as 'the wife of a *Śūdra*' being another than either a *Kuṇḍa* or a *Golaka*, he would not be entitled to a share. Therefore the expression 'on a *Śūdrā* woman, is poetic'. 20 25

It may be said, indeed, let there be a special prohibition for a share in land to a son by a *śūdrā*. But how, in that way, could the sons by the *kṣhatrīyā* and others get a right for land obtained by purchase and the like? Anticipating this, the Author says *Yadi krayādī-prāptā bhūriti* (p. 85 l. 17) *if land acquired by purchase and similar means &c.* (p. 208 l. 16). The meaning is that the prohibition being 30

1 See Bālabhāṭṭi on this part. It adds मापय इत्यनेन बन्धनोदाहरणम्  
2 See note 1 on p. 207 Mitākshara. 3 Yājñavalkya II 44.  
4 Yagn. II 117. 1. 5 i. e. a poetic licence

only of the son by a *Śūdrā* under the rule of taking<sup>1</sup> by the horn it is probable that a share exists for the sons of the *kṣhatrīyā* &c.

- 5' It may again be said, this is indeed very small, that a son by a *śūdrā* woman has no share in the land, since under another text, any share has been prohibited for him ; so the Author refutes it ; Yatpunar-brāhmaṇakṣatriyaviśāmitiādīnā (p. 83 l. 18) *As for the text, a son of a Brāhmaṇa, Kṣhatrīya, or Vaiśya* &c. (p. 208 l. 19). The meaning is that when by the father, while living, anything has been given to a son of a *śūdrā*, then the son of the *śūdrā* does not get a share.

### Yājñavalkya Verse 126.

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Uddhārawibhāgo nishiddha iti (p. 85 ll. 25. 26) *a partition with deductions has been forbidden* &c (p. 209 ll. 12-13). The meaning is that a distribution of shares under the text, "and the eldest with the best share" has been prohibited.

15

Some interpret this text viz ; "withheld by one co-heir from another" as indicating that even if common property which is liable for distribution has been withheld, there is no fault on their part. That is wrong ; and so the Author says, *Evam cha wachanasāyārthawatwāditi* (p. 83 l. 28) *thus since the text is thus significant* &c. (p. 209 l. 15).

20

This is the import: According to the mode stated before, by the statement of the rule itself regarding the distribution of equal shares the text has been (seen to be) with a purpose, it should not be imagined to be with the purpose of indicating an absence of a fault not mentioned, therefore it is a fault<sup>2</sup> to withhold even common property.

25

It may be said, well let there be a fault, but that is only in the case of the eldest, not (so) with the younger ones, as Manu has so declared. Anticipating this, the Author says *Nanu Manunā jyesṭhāsyaiweti* (p. 85 l. 29). *But Manu...only in the eldest* &c. (p. 209 l. 17). 'shall defraud' i. e. 'shall cheat'. That is to say he should not deceive them.

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*Dandāpūpikanītyeti*<sup>3</sup> (p. 86 l. ) Under the rule in the maxim of the 'loaves and the staff'. A collection of loaves is 'a multitude of loaves'.

1 लृणयद्विकृत्याय. Lit. 'taking by the horns' i. e. in a direct manner ; directly without any intervening agent ; see note above p.

2 Yājñ. II. 114.

3 There is a mistake in the print ; for दोषो वाचयति read दोषोऽयति.

† See note 2 on p. 209, Mitāksharā.

'Under the rule (of grammar)' the affix ३५ 'comes in the sense of collection thereof, after the names of things without consciousness, and after 'hasti' and 'dhenu'. So also Amara<sup>3</sup> "Āpūpikarṇ Sāshkulikarṇ, and thus like in case of inanimate things." Where a multitude of (cakes) loaves has been hung or tied to a stick, if such a stick is taken away by thieves, then it follows that much more has the multitude of loaves also been taken away. Similarly in the case under consideration when a fault has been pointed out for withholding common property in the case of the eldest who is independent, and who is in the place of the father, then much more must it be so in the case of others also. This is not only according to rules of equity, but under a text<sup>2</sup> also the fault has been indicated : Tathā chāviśeṣhenetyādinā (p. 86 l. 2) and moreover ... without exception &c. (. 209 l. 29).

It may be said, that in the case of common property, one also has a proprietary interest, and in the process of deprivation also what is taken is certainly property which is one's own; thus no blame attaches to the withholder. Anticipating this, the Author says : Atha sādharmaṇa-drawyamiti (p. 86 l. 6) that the common property &c. (p. 210 l. 8.) As in the common property one has a proprietary interest, so other sharers also have a proprietary interest, and so in the process of deprivation he will certainly stand to have taken away another's property, and following the rule of prohibition viz "one must not take (which is) another's property" a blame certainly exists, thus the Author refutes: Tadasadityādinā (p. 86 l. 7) commencing with that is wrong &c (p. 210 l. 9).

-With a view to emphasise this very meaning the Author illustrates a rule from the Sixth chapter. Yathā maudgē charau wipanna ityādinā (p. 86 l. 8) if an oblation of green kidney beans be not procurable &c (p. 210 l. 14). This is the Sixth Adhikarana in the Third Part of the Sixth Chapter: "And a forbidden material generally, because there is a Vedic text about it." It is laid down in the Śruti that the black barley, grama,<sup>4</sup> and the kodrava<sup>5</sup> gram are not acceptable for a sacrifice. There

1 Panini IV. 2 47 ३५ means a termination with a ह् ending e. g. आर्विहम्-अवपानं समूहं similarly हासितकम्, वेदकम्, शास्त्रालिकम् &c.

2 III 2-40. Here in the verses following are given forms of nouns indicating collections of things. आर्विरम् is a multitude of loaves, &c.

3 There is a mistake here in the print. On p 50 in l. 12 after देव, add तद्। सुवत्तन्यधामसीति । न वक्ष्यन्त्यावन् किन्तु वाचनिकोऽपि दोषः (भूतले इत्यादि) .

4 i. e. of Gautama. 5 Jaimini VI. 3. 20.

6 वरुण is another reading e. g. in Śābarabhāṣya. It means a small bean.

a doubt arises: The command is that 'an oblation of green kidney beans should be offered.' Here when the green kidney beans are not available, should the black kidney bean be accepted as a substitute or not? According to the objector, as the *nivāra* grain is accepted when paddy is not available, so when green beans are not available the black beans should be substituted. Indeed if it be said that under the text 'the black beans are not fit for a sacrifice' there being a prohibition, the black beans should not be accepted as a substitute, that is not so. There the prohibition is against the black beans as such in that form and not as crushed<sup>1</sup> parts of the black beans in which form they were available in substitution for the (crushed) part of the green kidney bean which were accepted as not being prohibited. Therefore the black beans should be taken as substitutes. The *Siddhāntin*, however, holds, that the black bean is entirely excluded as a means at a sacrifice on account of the *Śruti* text "the black beans are not fit for a sacrifice" which is of a general nature. Therefore even the part of the black bean which are inseparable<sup>2</sup> from them must be avoided. Therefore the black bean must not be accepted.

The application in the text is as follows: By putting forth the objector's position in the *Adhikaraṇa* the Author brings out the application of the text as follows; *Yathā maudge charāviti* (p. 86 l. 6) *as if an oblation of green kidney bean &c* (p. 280 l. 4). This is the meaning: when an oblation of the green kidney bean is destroyed, and in the absence of the green bean the black beans are taken on account of their resemblance with the green bean, the prohibitive rule contained in the text "the black beans are not fit for a sacrifice" has no scope; there is no prohibition, since part of the green bean are in the black bean, and the black bean are taken as a portion of green bean and not in their own form.

The Author takes up the conclusion and points out: *Mundgāwaya-weshu grhyamāṇeṣhvawarjanīyatayeti* (p. 86 l. 20) *since they were used by mistake for ground particles of green kidney beans &c.* (p. 210 ll. 1718). This is the meaning: By the text 'black kidney beans are not fit to be used in sacrifices' the black kidney bean has been generally prohibited. Therefore even when the black beans are taken by mistake for ground particles of the green kidney beans, ground particles of the black bean even are accepted by mistake as not prohibited, and thus the

1 The crushed beans of either sort not being at once distinguishable, the one is taken for the other.

2 नान्वियर invariably connected, inseparable. नान्वियरक is नान्वियरक-या प्याति:

prohibitive rule has a scope, and thus pointing out in substance the application of the rule even the instance taken as an illustration.  
\*PAGE 57. tion, the Author concludes by refuting the opinion of the other side : tasmādwachanata iti (p. 81 l. 11.) Therefore from the letter &c (p. 210 l. 22)

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### Yājñavalkya Verse 127.

With a view to point out a counter-illustration of the text "by one who has no male issue...on the soil of another", as also of 'both even he &c.', the Author states the meaning in substance: Ityasyārtha ityādinā (p. 86. l. 19.) The meaning of this is as follows &c. (p. 211. l. 13). The word *iti* is used in the sense of *evam* (in this way) and has the meaning presently to be mentioned. The Author now states that counter-illustration: Yādā tu nityukta iti. When, however, the person appointed &c. (p. 211. l. 19.)

10

The Author cites a text of Manu in support of the interpretation Yathoktam Manunā Kriyābhyupagamāditi (p. 86. ll. 22.) As has been declared by Manu : where by a special compact &c. (p. 211. ll. 24-25.) The Author expounds the text of Manu cited before : Atrotpannam ityādinā (p. 86. l. 24.) Let the child which will be here produced &c. (p. 24. ll. 29-30). When there is no contract that 'the child which will be produced here will be of us two' then the child belongs to the owner of the field alone, and that child is not of both. The Author confirms this by a text of Manu : Tathā phalantuanabhisandhāyeti (p. 86. l. 26.) So, if there be no special agreement with respect to the crop &c. (p. 211. l. 3226).

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When without any compact between the owners of the field and of the soil with respect to the crop, as also when a child is begotten on another's field—thus this goes with what has been stated before—that produce in the form of a child is of the owner of the field alone.

Here the plural is used as no other illustration was intended to be stated. Bijinām Kṣhetriṇām iti (p. 86. l. 26.) Of the owners of the seed, as also of the owners of the field &c. (p. 212. l. 1.) There the reason is : Bijādyonirbañyasati (p. 86. l. 27). The receptacle is more important than the seed. (p. 212. l. 27.) The meaning is that the actual is seen by the visible. Thus is the application of the verse. The particular meaning has indeed been made clear in the commentary.

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nindāśravanāditi (p. 87 l. 11) *Those who authorise the practice of appointment, are expressly censured &c.* (p. 213 ll. 2 3).

It may be said, indeed, by the text "the brother of the husband may take her according to the following rule", being in the nature of an affirmative pecept for marriage, she becomes the wife, and the husband's brother himself is the husband, and thus the relationship of a couple having arisen, a son born therefrom would certainly be their *Aurasa* son ; anticipating this, the Author says, *Āyan cha wiwāho wāchanika ityādina* (p. 87 l. 37) *Such a marriage is nominal* &c. (p. 214. l. 17).

This is the meaning intended : As in the case of one approaching under an appointment, anointing the body with ghee and the like is laid down as part of the formality, similarly this marriage also is a subordinate part of the approach by appointment and not a principal act by itself by which there would be the relationship of husband and wife. And hence it is that he is not an *Aurasa* son of the two, but on the other hand he is a *Kṣhetraja* only and of the owner of the field in the absence of a contract viz "Here the issue born will be of both of us". If, however, there be a contract, he is the son of both also.

### Yājñavalkya Verse 123-132.

*Ata eva aurasasama iti* (p 88 l 10) *And accordingly he is equal to a legitimate son* &c. (p. 215 l. 24). The meaning is that since he is the son of an *aurasa* daughter, he is the son of an appointed daughter, and accordingly the similarity with an *Aurasa* son, and not the position of an *Aurasa* itself, as there is a difference.

It may be objected that the exposition that 'the daughter herself regarded as a son' would be opposed to the statement "equal to *Aurasa* is the son of an appointed daughter" as she would in that case have no difference, so the Author says : *Sopyaursasama ityādina* (p. 88 l. 12) *such a one is only Similar to a legitimate son* &c. (p. 215 l. 29). This is the meaning intended : The particles from the father's body being thinned in the body of a daughter, the difference is due to want of intensiveness in the organs. By stating that 'the third is an appointed daughter' an appointed daughter has been enumerated as the third by *Vasiṣṭha* not by *Yājñavalkya*.

It may be asked is the *Dvayāmsukhyāyana* the *Aurasa* son of the owner of the seed, or is he some one of those similar to him? so the

1 वाचदिक simply because it is laid down in the text. Therefore its scope is confined to the text वाचद्वयन वाचद्वयदिक.

Author says Dwyāmuṣhyāyaṇāstultī (p. 88 l. 14). *The dwyāmuṣhyāyaṇa sons however &c.* Undistinguished from an *Aurasa* i. e. equal to an *Aurasa* son. The Author takes up from the original text, the portion "a *kṣhetraja* is one begotten on a wife &c." with a view to expound it  
 5 *kṣhetrajaḥ kṣhetrajaṭastultī* (p. 88 ll. 14 15) *kṣhetraja* is a son begotten on a wife &c. (p. 216 l. 4). [128].

Tathā pitṛgrha eva sansthiteti (p. 88 l. 18) *and abide in her father's house &c.* (p. 217 l. 4). The meaning is that if a son be born before marriage, as also if one stays at her father's house without being  
 10 married that is a *damsel*; a son born of her becomes of the maternal grandfather's.

It has been stated that if the *damsel* remain unmarried, then the son of the *damsel* becomes the son of the maternal grandfather; if she be married, of the husband; there the Author cites as authority the text  
 15 of Manu: Yathāha Manuḥ : Pitṛveśmanīti (p. 88 l. 19) *As says Manu .....in the house of her father &c.* (p. 217 l. 6).

The meaning of this : In the house of the father a son to whom a *damsel* gives birth secretly i. e. by misbehaviour, he born of a *damsel* should be designated a *damsel's* son; he becomes of the  
 20 husband. Here from the use of the expression 'of the husband', it appears that if she be married then of the husband, if not, of the maternal grandfather [129].

Sadṛsam pritisamyuktamīti (p. 88 l. 24). *of the same class... affectionately* (p. 217 ll. 17-18). 'Of the same class, i. e. of the same *varṇa*. Dāturayam pratiṣedha<sup>2</sup> iti (p. 88 l. 25). This prohibition regards the giver (p. 217 l. 20) i. e. not the one who accepts the gift.  
 25

The Author extends the ceremonial of son-making, described above, to sons bought, sons self-given and like others: Evam kṛtaswayam-datteti (p. 89 l. 2). *The same (ceremonial) should be extended to the case of son bought, self-given &c.* (p. 220 ll. 1-2), [130].  
 30

It may be said, indeed what has been said 'and belonging to the same class,' that is improper, as it conflicts with the text of Manu, so the Author refutes: Yattu Manunoktaṁ kṛṇīyādītyādīnā (p. 89 ll. 5-6).  
 35 *As for the text of Manu purchases &c.* (p. 220 ll. 8-9). There the Author

1 On p. 58 l. 6 read तथारविणद्विरे for तथारविणद्विरे.

2 See Vyavahāra Mayūkha on this point.

states a reason : Swajâtiyeshwayam prokta Ityupasamhârâditi (p. 89. l. 8) since the Author concludes by saying ' this law is propounded by me in regard to sons equal by class' &c. (p. 220. ll. 11-12.). By the Yogîswara is the remainder. The meaning is that thereby<sup>1</sup> then it would be a conflict with the text of Yogîswara (131)

Aurasapautrikeyasamawāya Iti (p. 89. l. 16.). If there be an *Aurasa* son and a *Pautrikeya* (p. 221 l. 9.). The meaning is that be there exist an *Aurasa* son as also a son of a *Putrikā*. Samastatra vibhāgaḥ syât jyeshṭhatâ nâsti hi striyaḥ Iti (p. 89. l. 8-9) the division of the heritage in that case must be equal since there is no right of primogeniture for a woman &c. (p. 221. ll. 12-13). The meaning of this : After an appointed daughter is constituted, if an *Aurasa* son be born, then the appointed daughter being a woman has no right of primogeniture i. e. has not the right to a special share as laid down in<sup>2</sup> "The additional share (deducted) for the eldest shall be one-twentieth and the best of all chattels," but the division shall be equal. By reason of the statement that '... shall be equal,' the *Aurasa* son does not take the entire property. Therefore, this is an exception to the rule in the text "in the absence of the preceding, each next succeeding." This is the meaning.

As the appointed daughter has a right to a share (even) when the *Aurasa* son exists, so other sons also have a right to a share so the Author says: Tathâ anyeshâm apityādīnâ (p. 89. l. 18.) beginning with so also in the case of others &c. (p. 221. l. 14.)

In support of the right of the *Kshetraja* and other sons to a share when an *Aurasa* son exists, the Author refers to a text of *Kâtyâyana* as an authority: Tathâ cha *Kâtyâyana* Ityādīnâ (p. 89. l. 21.) beginning with accordingly *Kâtyâyana* &c. (p. 22. l. 1.) *Kshetrajadattakâdaya* Iti (p. 89. l. 22.). The *Kshetraja*, the adopted and other sons &c. (p. 222. l. 5.) By the term *Ādi* (and others) are included the sons, bought, made, self-given and deserted. *Asawarnâḥ Kāṇineḥ* (p. 89. l. 23.) Of a different class e.g. the damsel's son &c. (p. 222. l. 7.) By the expression 'of a different class' is meant 'exceptionable'.

It has been stated that the sons adopted and others are not entitled to a fourth share if they are hostile to the *Aurasa* son and are devoid of good qualities, but that they should only get food and raiment. Now the Author maintains that a special rule exists when a *Kshetraja*

1 On p. 58 l. 16 add तथा.

2 Manu IX. 112.

son is hostile to the *Aurasa* son, or is devoid of good qualities, so the Author says : *Tatra Kṣhetrajaśyati* ( p. 89. l. 30. ) *Here, regarding a Kṣhetraja son &c.* ( p. 222. l. 24. ). *Pratikūlatwa-nirguṇatwa-samuchchayati* ( p. 89. l. 31. ) *where there is hostility as well as want of good qualities* ( p. 222. l. 27. ). The meaning is that when both exist. By the two texts viz. "are the six heirs and kinsmen" it is indicated that on failure of any other heir nearer in propinquity from among his *Sapinḍas* and *Samānodakas*, by the first text, these have the right of taking the inheritance, and by the latter text, those have not that right.

: Here the Author states the reason : *gotrarikthe janayiturityādina* ( p. 90. l. 8. ) beginning with *the family and the estate of his natural father* ( p. 223. l. 12. ) The meaning of this : An adopted son shall never have the *gotra* as also the property of his natural father i. e. the procreator. On the other hand, of him to whom he has been given, the *gotra* and property this adopted son gets. Similarly *Piṇḍa* i. e. the exequial oblation also shall follow the *gotra* and heritage; i. e. those who are connected with the *gotra* and the inheritance, to them also is the *piṇḍa* to be offered, for the reason that the funeral offering i. e. *piṇḍa* which is the means of the funeral offerings such as the *Śrāddha* and the like, fail i. e. recede from the giver i. e. the one who gives.

This, however, should be understood when the giver has other sons and the like. In their absence, however, he himself offers the *piṇḍa* and takes the inheritance. This (is what) comes to be said : Here the use of the son given is (only) indicative of a substituted son. And accordingly, of sons given and others, the right of taking the heritage having been established, while according to the view stated before their right of inheritance not coming up, there would be unauthoritativeness on account of a mutual contradiction. There would thus be the danger of these texts being regarded as meaningless, therefore the interpretation propounded by me is certainly better.

It may be asked indeed in the two groups of six (sons) the first six may have the right of taking the heritage of his *sapinḍas* and the rest, and the latter six not, but how as to the father's property? so the Author says: *Pitṛdhanahāritwan tuiti* ( p. 90. l. 9. ) *the right of inheriting their father's estate, however &c.* ( p. 223. l. 14-15. ) There the Author states the reason: *Na bhrātara iti* ( p. 90. l. 10. ) *not brothers &c.* ( p. 223. l. 17. ). It may be said, from the text 'The sons

take the heritage' an inference arises that sons have the right of inheritance. These sons are *aurasa* only and none others than these, so the Author says: *Aurasasya tu eka evaurasaḥ putra itī* (p. 90 ll. 11-12) ...of the *Aurasa* son, however...the *Aurasa* son alone &c. (p. 223. ll. 19-20). The meaning is that although there are two texts, as they indicate one meaning, there is a repetition. It may be exaggerated that even by analysing the real meaning of the word *dāyāda* (heir) the texts viz. "are the six heirs and Kinsmen" and "are six not heirs and Kinsmen," do not refer to the father's property, so the Author says: *Dāyādaśabda-syēti* (p. 90. l. 13.) the word *dāyāda* &c. (p. 223. l. 20.)

It may be said, indeed by the text 'The *Aurasa* is he who is procreated on a lawfully wedded 'wife' and other twelve sorts of sons have been pointed out by Yājñavalkya; and in the text 'in the absence of the preceding the next succeeding' has also been indicated the order of succession by inheritance, while in the remaining text and also in other Smṛtis has been indicated otherwise. For in the commentary to the treatise on *Dharma* by Āpastamba, has been collated another Smṛti thus, "The *Aurasa*, the appointed daughter, those born of the seed and on the field, the son of an appointed daughter, also the son of a re-married woman, the damsel's son, the son received with the bride, the son secretly born, the adopted, the purchased, the self-given, the son made, a deserted son, the son begotten somewhere, thus one's own sons are ten and five." Here there is an inversion of the number as of the order also. The confusion as to the number can be easily removed.

The appointed daughter, and the son of the appointed daughter, although two, are one category. Similarly those born of the seed and on the field. Also a child begotten somewhere is also one among these. Thus these being included in the three<sup>2</sup> sons of the appointed daughter, there are twelve only. Similarly also the inversion as to the order can be seen in itself.

In the work by Manu<sup>3</sup> however, "The legitimate son and the son born on the field are entitled to a share in the inheritance of the father; but the other ten in their order become entitled to the family name and to the share of the inheritance," the appointed daughter being treated as equal to the *Aurasa* son and thus having been included in him, other ten sons have been pointed out.

1 From here commences the objection which extends as far as l 22, on p 60 ending with अत एव 'पूर्वमिदं पर पर' इत्यादिवाह

2 Another reading is simply यथापानमतमिदं.

3 Ch. IX. 166-178, Sacred Books of the East Vol. XXV. pp. 361-364.

"He<sup>1</sup> whom a man begets on his own wedded wife, should be known as the *Aurasa* son, the first in rank [ 167 ]."

5 "He who was begotten on the wife<sup>2</sup> of a dead man, or of an impotent, or of one degraded<sup>3</sup>, who was appointed duly according to law that son is called the *Kṣhetraja* son [ 168 ].

"He whom his mother or his father, in a time of distress affectionately give with ( a libation of ) water and who is of the same class, is called a son given [ 169 ].

10 "He who being equal<sup>4</sup>, and able to discriminate right and wrong, and being endowed with filial virtues is made a son, such a one should be known as a son made [ 170 ].

PAGE 60\* "One in whose house a child is born and it is not known whose child it is, he is a son born secretly in the ( man's ) house and shall belong to him of whose wife he was  
15 born [ 171 ]."

"It is not known whose child it is' the meaning is that even when it is determined that he is born of a man of the same *Varṇa* and not from any of the lower or higher *Varṇa* it is not known from which man i. e. from which one in particular he is born. 'Shall belong to him of whose  
20 wife he was born' the meaning is that from whose so wife he was born, he shall 'be the son born to his wife.' By the word *talpa* ( wife ) is indicated a wife, e. g. *Gurutalpagah* 'one having an intercourse with the wife of a preceptor.' According to *Amara*<sup>5</sup> "The word *Talpa* is used to indicate the bed, the market, or the wife."

25 "He, whom being abandoned by his mother and father or by any one of them, one accepts is known as the son cast off [ 172 ].

"A son whom a damsel secretly bears in the house of her father, one shall name the son of an unmarried damsel (*Kānina*) and declare such offspring of an unmarried girl ( to belong ) to him who weds her afterwards [ 173 ].

30 "When a pregnant woman is married, whether knowingly, the child in the womb becomes of the man who marries her, and is called a son received with the bride [ 174 ].

1 V. L. स्वयमुत्पादयोद्धि यम्.

2 तत्पत्न्यः is a better reading and has been adopted in the translation.

3 पतितस्य. व्याधितस्य (diseased) is another reading.

4 समः i. e. equal in caste or by qualities, Cp. शौनक's description of an adopted son  
दुष्कृत्यानाम् : ।

"Him, whom one with the object of having a child buys from his mother and father, such a one is called a son bought whether equal or unequal [175]. *i. e.* equal or unequal in qualities.

"When a woman abandoned by her husband, or a widow, of her own accord contracting a second marriage bears (a son) such (a son) is called the son of a re-married woman [176] 'contracting a second marriage' *i. e.* having again become a wife.

"He who is deprived of his parents or has been abandoned (by them) without cause, and resorts himself, is called a son self-given [177]."  
 'Without cause' *i. e.* in the absence of degradation or any other such case. 'Resorts' *i. e.* offers. According to Amarā<sup>1</sup> "*Spariṇānam* means donation, (*Vidrāṇanam* present, (*vitaraṇam*) giving away (*pratipādanam*)).

He whom a *Brāhmaṇa* begets on a *Sūdrā* woman through lust, though functioning (as a son) is still (regarded as) a corpse, and is therefore known as a *Pāraśava* (a living corpse).  
 'Though functioning, is still a corpse' *i. e.* though functioning towards his ancestors by (offering) the *śrāddhas* &c. *i. e.* pleasing them like any other son, still owing to his uncommendable position is like a corpse *i. e.* functioning like a corpse, and therefore a living corpse.

This is the meaning : Of this son of a *sūdrā* woman having been born in lawful marriage in the descending order, the legitimacy is undistinguishable. Still while those (others) are living, his right to take the entire property being non-existing, in this chapter<sup>2</sup> he has been named. In the *Smṛti* of *Vasiṣṭha*,<sup>3</sup> on the other hand, "the third son is an appointed daughter herself" is an inversion of the order ; similarly may be found in other *Smṛtis* also, but all this is not written here through fear of swelling (the bulk of) the book.

Therefore how of the statement 'in the absence of the preceding, each next preceding' ?<sup>4</sup> Anticipating this, the Author says :  
*Vāsiṣṭhādīṣhu wargadwayepitī* (p. 90 l. 54.) in the *Institutes of Vasiṣṭha and others in both sets &c.* (p. 223. l. 24 and p. 224. l. 1.)

This is the import of the refutation here : *Manu*<sup>5</sup> in the text, "The *Aurasa* son as also the *Kṣhetraja*, the son adopted, the son made, the son secretly born, the son cast off, are six heirs and kinsmen ; and the son of an unmarried damsel, the son received with the bride, the son bought, as also the son begotten on a remarried woman, the son self-given, and the son born of a *sūdrā* woman, are

1. II. 7. 29. 2. *i. e.* of the *Mitākṣharā*. 3. Ch. XVII. 15. 4. Here ends the objection which commenced above at p. 149. l. 11 5. Ch. IX. 159-160.



six not heirs but kinsmen", having demonstrated the right of the first six of taking the heritage in the absence of his *Sapinda*s or *samānodakas* or any nearer heirs, as also the absence of this in regard to the second six, and on that occasion also having thereafter explained the characteristics of the *Aurasa* son and [others, it appears that in reality, the expression "this is the order" is followed in the course of the opening (expression). And hence even the expression 'in order' does not restrict this order in all cases, on the other hand, under certain particular circumstances only. That particular circumstance being, with good qualities, or without good qualities. Similar is the course of the reading in other *Smṛtis* also.

Moreover this statement of Yājñavalkya is consonant with reason also. For, in the case of the *Aurasa* and the son of an appointed daughter, on account of being born in legitimacy and of the equality<sup>1</sup> (of position) respectively, and of the *Kṣhetraja* son, the son secretly born, the damsel's son, and the son of a remarried woman, the preference over the adopted son is on account of their being produced from one's own seed and on one's own field. In the case of the son received with the wife, although begotten on a wife taken from another he being regarded as one's own his inclusion in the second six is under the text only. Thus everything is unexceptionable.

Moreover, all this has application in another *Yuga*. In the *Kali Age*, however, the *Aurasa* and the *Dattaka* only, and an appointed daughter being (regarded as) equal to an *Aurasa*, as it has been stated that '(sons) other than the adopted and the legitimate should not<sup>2</sup> be accepted as sons.' Here in the remaining portion occurs the remainder<sup>3</sup> thus. "The wise have prescribed that these *dharma*s shall be avoided in the *Kali yuga*." The usage of the illustrious also appears to be the same in *Kali*.

Indeed, let there not be a conflict with other texts; for Gautama has enumerated as the tenth, in order the son of an appointed daughter who is (here) regarded as equal to an *Aurasa* son, and there would be a conflict with his text. Anticipating this, the Author refutes it: Gautamiye twiti. (p. 90 l. 15) in Gautama's text *Vijātivishaya* itī (p. 90 l. 15) is relative to one differing in tribe &c (p. 224 l. 4) i.e. the meaning is that it has a reference to the son of an appointed daughter born of a *Kṣatriya* woman or the like from the *Brahmaṇa* or any other.

1 i. e. equality of the *पितृव्य* with *जीत*.

2 There is a mistake in the print. On p. 61. l. 7. For *पुत्रेय* read *पुत्रे* १. The reading as *पुत्रेय* would be quite admissible in a list of *अतिवर्ज्य*s. See for a list of *अतिवर्ज्य*s. *Smṛti-chandrikā*, Ghāṭpure's Edition p. 12. l. 17.

3 *Manu* IX, 152.

It may be argued, indeed, under the text "Among brothers sprung from one (father)" by reason of a son of one brother only, other brothers have been described as having a son he is another son in addition to twelve sons, and therefore the mentioning of the number twelve in regard to the sons is improper, So the Author says: Yattu Bhrātṛṇāmeka-jātānāmityādinā (p. 90 l. 16) *As for the text "Among brothers sprung from one father &c".* (224 l. 7.), The Author states a reason there : Tatsutā Gotrajā bandhuriti (p. 90 l. 18) *Their sons, the Gotrajas and the Bandhus &c.* (p. 224 l. 12) i. e. it will be in conflict with the text of Yājñavalkya viz. "The wife, and the daughters also, the parents, the brother likewise, and their sons, gentiles, cognates, a pupil and a fellow student," where the right of inheritance of the brothers' son has been demonstrated to be after the brothers. If however, other brothers are regarded as 'having a son' as by reason of there being a brothers' son (and therefore regarded as) a son, he will be entitled to take the inheritance even before all such as the father and the rest. This is the meaning.

### Yājñavalkya Verses 133-134.

The Author points out that the son of a damsel and the like are of the same caste: Tatra Kānīnīti (p. 90 l. 20). *Here the damsel's son &c.* (p. 254 l. 60). Varṇajātīlakṣhaṇābhāwasyoktatwāditi (p. 90 l. 23.) *as it has already been stated that they are not within the definition of the tribe and class &c* (p. 294 l. 23-24). i. e. the absence of the Varna as for either of the Kunda and Golaka having been stated in the Āchārādhyāya.<sup>1</sup>

The Author mentions the order of inheritance among the Mūrdhāvasikta<sup>2</sup> and the others : Tathā anulomajādīnāmīti (p. 90 l. 23.) *as also issue procreated in the direct order &c.* (p. 224 ll. 24-25) Nādhikam daśamāddadyāt śūdrāputrāya dharmata īti (p. 90. l. 16) *no more than a tenth part should be given to a son of a Śūdrā woman, according to law &c.* (p. 22. 5. ll. 6e8)

It may be argued, this is improper. For one share has been stated to be for a son from a Śūdrā woman in the text "Shall have four, three, two, and one shares respectively in the order of their Varnas", while here a tenth share has been mentioned. The answer is no, not so. The four shares of the son of a Brāhmaṇi and the three of a Kṣatriyā make

1 The reference here is to the Mitāksharā on Yājñ. I. 90 at p. 15. l. 27. गृह्य and गेल्ल. These have been defined by Manu in Ch. III. 174. cited by the Mitāksharā on Yājñ I. 222.

2 A son born of a Kṣatriyā woman from a Brāhmaṇa. See Yājñ. I. 91

seven; the two of the son of a *Vaiśyī* would make it nine and one for the son of a *Sūdrā* added together make ten. And thus even in the text 'Four, three, two and one' a tenth share having been stated there is no contradiction, and thus everything is unexceptionable.

- 5 Ye pariṇītāḥ putrāḥ santīti (p. 91. ll. 1-2), *if there be sons of a wedded wife &c.* (p. 226. l. 10). *i. e.* sons of a wife by marriage Swabhāgādardham dadyādīti (p. 91 ll. 2-3.) *should give half from their own allotment &c.* (p. 226, l. 12). The meaning is that they should give from the common property an amount equal to a half
- 10 of their own share.

### Yājñavalkya Verses 135 & 136.

- Having regard to the difficult nature of the propositions stated and to the still more difficult character of those to be now described, and with a view to draw pointed attention of the audience, the Author of these commentaries explains the context by a reference to the verses : Mukhyagauṇasutā iti (p. 91. l. 7.) *sons, principal and secondary etc.* (p. 227. l. 7.) Teṣhāmabhāve sarveṣhāmīti (l. 7). *In the absence of them, in the case of all etc.* (207. l. 8.) 'in the case of all' *i. e.* of the *Brāhmaṇa* and the other *varṇas* as also of the *Mūrdhavasikta* and other tribes of the descending order, and *sūta* and others born in
- 20 (unions of) the inverse order.

\* PAGE 62

- "This rule extends to all classes." Here the word 'all' is not adjectival of all 'classes,' but is independent. Accordingly it should be dissolved as, all, as well as the *varṇas*; a combination of these. Intending therefore to indicate that this is part of a compound included in it the Author says, Sarveṣhu Mūrdhavasiktādīṣhwīti (p. 91, l. 14). *extending to all tribes whether mūrdhavasikta and others etc.* (p. 228. ll. 13-14).
- 25

- 30 Patyurno yājñasaṅyoga iti smaraṇādīti (p. 91. l. 17). *Conformably with the etymology of the term as implying a connexion with religious rites &c.* (p. 228 l. 18 and 229 l. 1.). Of this aphorism of Pāṇini this is the meaning. The word *Patī* is changed into a form containing the letter *na* (a). When the sacrifice is commenced jointly her offering herself as an agent in the sacrifice, entitles her to enjoy
- 35 the fruit also. This is what comes to (have been) said : A woman consecrated by the ceremony of marriage can alone take part in a sacrifice and none other. It is only a woman consecrated by the marriage ceremony who is called a *Patnī*. Although while the eldest

has not been prohibited, the younger have no right in a sacrifice still in her absence, or even when she is living, but is affected by a long-continued illness, or has become degraded, others have a right of officiating at a sacrifice, i. e. to say, have the capacity to take part in a sacrifice, and thus by the expression 'association at a sacrifice' is meant a capacity for taking part in a sacrifice. 5

By the word *Yajna*, marriage itself is mentioned, as even there the offerings are made intending them to be for the Gods, the sacrifice being, marriage itself. Even thus, it is only the married (woman) who can be called a *Patni* and not any other. In that case, there being no marriage without a woman, she is a means for the sacrifice. 10

*Yathāṁsaṁ vibhajya dhanam gr̥hṇantīti* (p. 91. l. 18). *They take after dividing the estate according to their respective shares etc.* (p. 229 l. 4). 'According to their respective shares' i. e. According to the text 'four, three, two and one' the *Brāhmaṇi*, *Kṣatriyā*, *Vaiśyā*, and the *Sūdrā* also should take. 15

*Aputrasyāpyāryakulajā patnīti* (p. 91. l. 23). *Of a man leaving no male issue, the wife born in an Arya family etc.* (p. 230 ll. 2-3). Here by the expression 'born in a family' is not to be understood that she must be born from one of the same *Varna*, but only that (she is) born in a good family, as also from one of the same *Varna* born in a descending order. 'Who are not unfaithful' i. e. to say, who are chaste. 20

*Āchchhindyuritarāsu tuiti* (p. 91. l. 17). *They may however, cut it off in the case of those who behave otherwise* (p. 230 l. 15). 'In the case of others' i. e. in the matter of the unchaste women even 'maintenance' i. e. support, 'may cut off,' i. e. discontinue, i. e. to say should not give. This (rule regarding) non-maintenance is in regard to those who are extremely vicious. 25

The Author points out the adjustment made by Dhāreśwara of these texts which are thus mutually contradictory. *Patnī gr̥hṇiyādityetad-wachansjātamīti* (p. 92 l. 4). *The texts which lay down the rule that a wife should take etc.* (p. 231 ll. 14-15) 'This collection of texts' i. e. the texts of *Yājñavalkya*, *Vṛaddhamānu*, *Bṛhadviśṇu*, *Kātyāyana* and *Bṛhaspati*. 30

It may be asked whence do you get this, that that wife alone shall be entitled to take the property who is desirous of seeking permission for raising up issue etc.? Anticipating such a question, and also another as to for what reason? And with a view to demonstrate that 35

conclusion itself the Author says *Kuta etaditi* (p. 92 l. 5.) *whence is it ?* *Nā swatantrāyā iti* (l. 5) *not if she remained alone by herself etc.* (p. 232 l. 1.) i. e. not desiring for an issue by appointment.

The Author states that reason. : *Pitā harediti* (l. 5.) *the father shall take etc.* (p. 232 l. 2). The meaning is that it would be in conflict with the text "The father shall take of him who leaves no son."

It may then be asked, what then ? Anticipating such a question and intending to lay down the relative force of both these texts as authorities and even there intending to state a reason, the Author says : *Vyawasthākāraṇaṃ waktavyamiti* (p. 92 l. 6.) *a rule of adjustment must be stated etc.* (p. 232. l. 3.)

It may be said, indeed, let that rule be any other, why should it necessarily contemplate the *levirate* ? Anticipating this the Author says, *Nānyaditi* (l. 6). *No other etc.* (p. 232 l. 4). Not only is it from force of reason that the inheritance shall be of her who desires a *levirate*, but there is a text of Gautama also, as the Author says : *Gautamawachanāchcheti* (l. 6) *and also on the authority of the text of Gautama* (p. 232 ll. 4-5).

The Author expounds the word *Wā*, 'or', in 'or may seek (to raise an) offspring, as used in the sense of 'if', *Yadī bijam līpseteti* (l. 8). *provided she seek progeny &c.* (p. 233. l. 4).

*Dadyāttasyaiwa taddhanamiti* (l. 9). *deliver that property even to that* (p. 233 l. 7.) 'That property' i. e. his i. e. the brother's property should be delivered to him. By this statement, it appears it has a reference to a separated brother. Otherwise, in the absence of a partition, there being no separate property of his own, the statement in the text 'the division must then be made equally' that the division should be equal appears to be in reference to undivided property, as if (already) divided there would be (no occasion for a) division.

*Yogīṣwaraṇāpi kila wakṣhayta iti* (p. 92. l. 15.) *The same, it is pretended, will be declared later on by the Lord of the yogis* (p. 234. l. 1). Here the word '*kila*'—it is pretended—is used to indicate disapprobation; as in "you will indeed fight" since another interpretation of the text of the Lord of the Yogis viz. "their sonless wives etc." will hereafter be stated.

*Tathā cha Kenāpi smṛtamiti* (l. 18) *it has been declared by some author* (p. 234. l. 7.) 'By some author' is indicative of disrespect.

Therefore in this statement of the objection, the text has been set out in accordance with the reasoning in the original. The Author refutes the adjustment propounded by Dhāreśwara. Tadanupapannamiti (l. 20) *That is wrong* (p. 234 l. 12) Aprastutatwāchcheti (l. 20). *nor is it suggested by the premises &c.* (l. 14) i. e. it is not relevant to the matter in hand.

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There the Author states an objection to the first course :  
Tatra niyogasyaiveti (l. 22). *There if the appointment alone &c.* (p. 234 l. 17). It may be argued, indeed, if the appointment alone is the cause for the inheritance, when that exists, even a woman without a son may get the property, what objection (is there) ? So the Author says : Utpannasya cha putrasyeti (l. 22) *of the son born to the estate &c.* (p. 234 l. 18).

This is the import : In the case of a son born<sup>1</sup> of appointment, that (fact) not being the cause<sup>2</sup> of his title to inheriting property, he will have no right of inheritance, There would be an opposition to the texts such as "of heirs dividing after the death of the father<sup>3</sup>, let the mother also take an equal share", and "one who departed for heaven leaving no male issue ; this rule extends to all classes", laying down the mode of division among sons of twelve sorts, as also stating the rule of inheritance for others.

The Author refutes the second alternative : Atha tadapatyasyaiveti (l. 23). *On the other hand if the offspring alone &c.* (p. 234 l. 19). This is the import : If the cause of succession to the property were (the existence of) only the son, the widow should not be stated (to have a right) as in "the widow, the daughter also &c." because she will (then) have no right of inheritance to the property, while this text lays down the causes which induce a right of the succession to the property.

It may be said, indeed, for a wife to succeed to the property six alternatives are possible : thus, either the appointment is the cause, or the child born of it be the cause, or there be a special cause, and even in the special cause, is the appointment the principal, or the child, or have the two equal importance ? Thus the suggestion of only two alternatives is improper. To this the answer is, no, this is not so ; by a

1 See note 7 on p. 234 of the Mitākṣharā

2 Read विनिर्वाचयति for विनिर्वाचयति.

3 विनुस्त्व. विनोस्त्व. would be meaningless.

refutation of the first two alternatives alone stand the other alternatives refuted, their separate mention is not contemplated.

It is thus : When in the special cause, the appointment is the principal, then the child becomes a subordinate<sup>1</sup>, and although the child is itself a cause, it will be as if it is not a cause, as it is dependent on another. Moreover, also, a right to the succession to the property will be reached for one who has not begotten a son, and thus the refutation stated in connection with the first alternative is in that itself. If, however, the child be the principal, then it should not be said "the wife &c" and thus the fault is apparent in itself. If both be regarded as the principal (cause), the wife under an appointment as well as the son having the right to succession to the property, by simply mentioning "The wife, the daughter" (and suggesting) the succession to the property of the wife alone would be improper. If, on the other hand, it be said, that in the case of both being the principal (cause) it comes to be stated that the son begotten by the appointment is the principal, even then do not begin (the rule) with "the wife &c" as the son alone has the right of succession to the property. Thus the two refutations stated before are from all points of view incontestable, there is no incongruity whatsoever, and the statement of the two alternatives is unobjectionable.

It may be argued again, indeed, what has been suggested that "the wife &c." should not be begun, is not correct. The women's right of succession to property is through the husband, or through the son *vide* the text<sup>2</sup> "The woman does not deserve independence". And thus there being no right of succession for one who has no husband, as also one who has no son, it is clear that in the absence of the husband a son can be had only by appointment, and it is through him that the wife's right of succession to the property has been stated in "the wife, the daughters &c." Therefore the text beginning with "the wife &c." is with a meaning, and the adjustment stated by us also may be accepted: Anticipating this, the Author says : *Atha strīṇāmīdā* (I, 24). *But it is said, women &c.* (p. 235 l. 1). This may be so, if there be a rule that the succession of women to property can only be through the husband or the son, But such a rule itself does not hold, as succession of women to property is known to be through other media also.

1 उपसर्जनम् as opposed to प्रधानम्. A word which loses its original independent character, either by composition or derivation. e.g. पाणिनीयः—a pupil of Pāṇini, here Pāṇini becomes उपसर्जन, so also in राजपुरुषः राजन् becomes उपसर्जन.

2 Manu IX. 3.

The Author refutes : *Tadapyasadadhyagnīti adhyāwahanikamīti* (p. 92 ll. 24. 25). That is wrong.....what was given before the nuptial fire and what was presented in the bridal procession &c. (p. 235 ll. 3-5). The Author will expound<sup>1</sup> later on the (nature of the) *stridhana* known as *Adhyāwahanika* thus, "That, again, which a woman receives while she is conducted from her father's house, is instanced as the property of a woman under the name of *Adhyāwahanika* (gift presented in the bridal procession )."

If her succession to the property be as one seeking an appointment and through the son, that son is a *kṣhetraja* son ; and in this way the right of succession to the property of this *kṣhetraja* son will necessarily come to be laid down, and this very rule having been stated in the text "the *gaurasa* son is he who is procreated on a lawfully wedded wife &c" the wife should not be mentioned again as in "the wife, the daughters &c." as it would be tautologous, so the Author says *Kinchetyādīnā* (l. 26) beginning with *moreover* &c. (l. 8).

It may be argued again, indeed, this rule viz. that the property of one who dies sonless, she takes irrespective of her seeking an issue by appointment, but then what in that case would be the force of the texts of *Gautama* ? Anticipating this and with a view to indicate their application the Author repeats the text of *Gautama* together with the substance of the objection, *Atha pinḍagotrārṣhisambandhīti* (l. 28) *tadā anapatyasya stridhanam gṛhṇīyādīti* (l. 30). But.....*Kinsmen Connected by pinḍa, by family name, or by descent from the same patriarch* (p, 235 ll. 15-19).....then the widow of one who leaves no issue may share the effects &c. (ll. 24-25). The order of words is, the effects of one who leaves no issue, the woman may take.

\*PAGE 64 Here the import is this : After having stated that kinsmen connected by the family name and by descent from the same patriarch take the inheritance, as also the wife, he prescribes two courses for her who has lost her husband. Of these, this is one course: *Sā strībijaṃ wā lipsete* (l. 28).....or the widow may seek to raise up offspring &c. (p. 235 l. 19) i. e. she should contemplate a son by a recourse to the rule of appointment. The word *va* (or) here is not indicative of (*yadi*) but, it imports an option. And an option contemplates an alternative course. That alternative itself is the second alternative. And it appears that, that course, although not actually expressed in the text, by the force of the use of the word 'or' (*va*), would

1 See *Mitāksharā* Text p. 100 ll. 22-23. Translation p 272 ll. 9-11.



be known as the counterpart of the rule laying down the desire for an issue by appointment, to the one of remaining chaste. This is what is (intended to be) said; a two-fold course of conduct is presented, either desire for a son through appointment, or remain chaste.

- 5      Tadavibhakte saṃsṛṣṭīni wā bhartari pretā itī (p. 93 l. 5) *it ...if the husband die unseparated...or re-united &c.* (p. 236 ll. 15 17). This is what is (intended to be) said: when the husband dies unseparated, or if the husband die a re-united member, and that because in either of these two cases his widow has no right of succession to the property, therefore thinking that if she herself has no right to the property, let her son have it, she should not thus resort to the begetting of issue by appointment through 'covetousness for the estate'.

- 15      It may be said, that premising about the re-united members Nārada begins, "the shares of re-united brethren are considered to be exclusively theirs" and continues: "Among brothers, if any one die without issue, or enter a religious order, let the rest of the brothers divide his property excepting the *stridhana* (of his wife). They should make provision for the maintenance of his wives until their death", in pursuance to the introduction "the other brothers who are re-united shall take." This is the rule laid down. The same import has been laid down in the text "If among brothers, any one die without issue &c." and thus there would be tautology. Anticipating such an objection, the Author refutes it: Na cha bhrātṛṇāmityādīnā (p. 93. l. 9.) Nor..... among brothers &c. (p. 236. ll. 25-27.) This is the meaning: While expounding at details what was stated before in brief viz. 'among these, the woman's property' (*stridhana*) is not liable for a distribution and also 'the maintenance of these women should be provided for', by these two sentences two rules of different import have been stated, so that they do not merely state again what was stated before by which there would be a tautology. Here, by the expression "excepting the *stridhana*" a rule as to the indivisibility of that property, and by the latter clauses the latter rule, have been indicated.

- 35      The Author points out the meaning of the text of the Lord of the Yogis, according to his own view: Yadapyaṣṭrā Yōshita itī (p. 93. l. 11.) *As for the passage.....the children, wives &c.* (p. 237. l. 6.) As for the text of Manu<sup>1</sup> viz. "That brother who takes the wealth of a deceased brother, or also his wife, after begetting a child for the

brother, should verily hand over that wealth to him, which was stated in the course of the statement of the objector as demonstrating that even when a brother is a separated member, his widow could take the property only through the means of an appointment, there Manu himself having prohibited the begetting of an issue by appointment, its refutation was facilitated, and the other texts cited without exhibiting the main proposition should be regarded as so cited with a view to test the intelligence of the teacher and as indicative of the view intended by himself.

The refutation would be in this way: Having censured the begetting of issue by appointment by the text "By begetting issue from another by an appointment, they would destroy the ancient law", that text cannot be taken as laying down a rule that 'one must necessarily procreate, by appointment, a son on the widow of a separated brother and hand over his property to him', but thereby is prohibited for a woman the continuing solely by oneself as per the text "A woman does not deserve independence". While staying at the house of her brother-in-law, and while her property is being looked after by the brother-in-law owing to woman's incapability, out of a desire for progeny, if the woman wishes to have issue by appointment, which though censured is established under the law, then after the issue is born, the brother-in-law should not covet the wealth, but make it over to him. Thus should the texts be expounded, as (otherwise) the several texts would conflict. Therefore also in the text "He who bears the wealth", the root धृन् (*bhrn*) is used by Manu in the sense of 'to hold' 'to support'.

It may be argued, indeed, the word sacrifice includes by implication all religious purposes whatever, and is not expressive of a sacrifice (as such only) and then gifts and offerings are also included. Anticipating this, the Author says: *Atha Yajñasābdasyeti* ( p. 97. l. 13. ) Or again, if.....if the word sacrifice &c. ( p. 237. l. 13. ) The renunciation of a thing directed towards a deity is an 'offering' (*Yāgaḥ*); the same object ending with the throwing into the fire is a 'burnt offering' (*Homaḥ*). Establishing another's ownership by terminating one's own right of ownership is a 'gift' (*Dāna*); thus is the distinction between a *Yāga*, *Homa* and *Dāna*. Thus if the use of wealth were for religious purposes (*Dharma*) only, the attainment of worldly prosperity (*Artha*) which is accomplished by wealth and which is secured by agriculture, commerce &c., as also worldly desires (*Kāma*) which also is accomplished by wealth, and which has a connection with flowers,

sandal and the like will not be. So the author refutes : *Evam tarhiarthakāmayoriti* (l. 14.) *Thus then the other two—viz. Artha and Kāma* (p. 238. l. 2.).

It may be said, yes, that is so, and so the Author says : *Tathā satyādineti* (l. 14.) *in that case &c.* (l. 4.) In respect of religious merit (*Dharma*), wealth (*Artha*) and pleasure (*Kāma*), to the utmost of his power, one must not let the morning, midday and the evening be fruitless. This is the order of words in the text of Gautama.

*Na tathaitāni śakyante iti* (l. 16.) *These cannot effectually be &c.* (p. 238. l. 9.) This has been stated by Manu<sup>1</sup> in connection with the restraint of senses commencing with "should strive to restrain the organs which run wild among sensual objects. The renunciation of all pleasures is far superior than the attainment of them; these cannot be so restrained by abstinence". The meaning of this : of all pleasures, the renunciation is far superior i. e. is better, i. e. is the best than their attainment i. e. enjoyment. These i. e. these organs which beget sins on account of their exclusive attachment for passions, cannot be so restrained i. e. properly curbed by abstinence i. e. non-enjoyment, of the beautiful form and the like (media of) pleasures. The meaning is the appreciation of the inherent faults cannot be so attained by an abstinence from pleasures as by an experience of them. The import is, that there would be a conflict with a text which demonstrates that wealth (*Artha*) and pleasure (*Kāma*) must necessarily be secured, their attainment being a necessary duty as the enjoyment of unforbidden pleasures creates a feeling of indifference for them.

If wealth be intended for a sacrifice, then it would be opposed to the established conclusion that the wearing of gold is for a worldly object (*Purushārtha*), which was demonstrated by the *Siddhāntin*<sup>2</sup> in refutation to the first position<sup>3</sup> stated viz. that by the text "Gold should be worn" the wearing of gold has been prescribed in connection with a religious<sup>4</sup> object (*Kratuārtha*), so the Author says : *Api cha dhanasya yajñārthatwe hiraṇyam dhāryamititi...tatpratyuddhṛtam syāditi* (p. 93. ll. 17-18.) *Moreover, if wealth be designed for sacrifices, the argument would be reversed by which..... 'let gold be preserved &c.'* (p. 238. ll. 10-12.). 'Reversed' (*pratyuddhṛtam*) i. e. undone, in other words, would be contradicted.

1 XX. II 88, 95-96.

2 i. e. the established final conclusion.

3 i. e. the *ṛṣi*.

4 As contrasted with a worldly end ( *prasaṅga* )

This is an *Adhikaraṇa*<sup>1</sup> in the fourth *Pāda* of the third *Adhyāya* (which runs thus) "On the other hand, it (it do) not (occur in) in any (particular) context, (it is in) his ordinary capacity; since it differs (from those i. e. found stated in the context)."

There is a passage in the *Śruti* viz. "Therefore, so that one may become comely, gold should be worn; his enemy becomes uncomely". Here a doubt arises. Has this wearing of gold been prescribed as part of a sacrificial detail, or is the wearing laid down as a rite in connection with the gold in the sacrifice, or, is it because the wearing of gold which has been prescribed in the passage 'gold happens to be (worn) on the hand, and in pursuance of that a goodness of colour i. e. a comeliness of appearance is prescribed, by the passage 'gold should be worn'; or perhaps it may be that the wearing of gold has been prescribed in a worldly capacity (*puruṣaḥ* *lata*). 5 10

The first position here is thus stated: Although here only the wearing of gold happens to be laid down, still by reason of the anticipation of its results as it has been prescribed by a passage in the *Veda*, and thus the act is part of the Vedic duties, by a parity with the *Darsa Pūrṇamāsa* and other Vedic sacrifices a Vedic act carrying certain results pervades the mind. There in the same Vedic operation, the wearing will become part of the sacrifice as immediately or remotely productive of a result after the manner of the principal sacrifice. And thus, its principal characteristic being realised the wearing is a rite, and as is the case with sprinkling in the passage 'he sprinkles the paddy' which obviates all expectations as to the past or the future, any anticipation for heaven or the like is not proper. This is one view. 15 20 25

Or, 'by the potential passive termination *ya* (य) in the expression 'Gold should be worn', wearing has been laid as a duty, and gold, which is the object, being in the accusative case, it comes to be the principal object, and therefore the wearing is a rite. As is the case with the sprinkling in the passage 'he sprinkles the paddy'. Under the maxim 'A thing 30

1 The *Sūtras* of *Vyāsa* (उत्तरममश) and *Jaimini* (पथममश) are divided into *Adhyāyas*, the *Adhyāyas* into *Pādas*, and the *Pādas* into *Adhikaraṇas* or sections, each *Adhikaraṇa* covering a number of *Sūtras* or Aphorisms. According to the *Mīmāṃsaka*s a complete *Adhikaraṇa* consists of five parts. विषयो विज्ञयज्ञेय दूषेयस्तथोपरम् । निश्चयेति विद्वान् शास्त्रेतिवत्यस्य इत्यम् ॥ विषय is the subject matter to be explained, निश्चय or मशय is the doubt or question arising upon the matter, दूषेय is the first side or the *prima facie* argument and उत्तर or उत्तरपक्ष is the answer and, निर्णय or सिद्धान्त is the final demonstrated conclusion.

which has a use in the past or the future must be ( properly ) purified, the ( purificatory ) rite must be performed of that which has been used ( in the past ) or which will be used ( in future ). And use can only be of such as have any object. Of that which has no object, as e. g. worldly gold, cannot have a rite e. g. of wearing, it cannot be regarded as part of the sacrifice which has a use in near or in future, like the principal part of the sacrifice, taking it to be an injunction for wearing in pursuance of the gold as part of the sacrifice, but as a purificatory act like the sprinkling. This is another ( view ).

Or still another view is that gold is part of the sacrifice and therefore wearing is only a repetition of the principal, and by the short form *suvarṇa*, only a good colour is laid down.

And thus in all the three ways, the position being that it is part of a religious duty ( *Kratwartha* ), the Answer is as follows :

As to what has been said there viz. that on account of a resemblance in having the act and with the Vaidic ceremonials, by a parity of action and by regard to the expected result it appears to be for a religious purpose, such a rule cannot be deduced even as regards the securing of the heavenly regions on account of its being the act.

In regard to passages such as "one desirous of heaven should offer a sacrifice with the *Darśa*<sup>1</sup> and *Pūrṇamāsa*" the heaven and the like being produced in regard to the agent, and on account of its Vaidika Character, it secures both the creation of heaven as well the sacrifice, its having the act as well as the *Vandka*<sup>2</sup> character is the twofold cause, and not necessarily the sacrifice only, so that even in the case of a special rule, there might happen to be secured the merit of a sacrifice.

Nor can there be realisation of the gold in the sacrifice, as in the repetition of the rule as to gold, a rule as to the rite of wearing may come up. As also on account of the existence of gold among the people, the gold in the sacrifice is not realised. Wearing is not necessarily the rite as to the wearing, as the wearing can be accounted for even without an invisible result. The potential passive termination *ya*, when used in regard to the object indicates only the capacity to be accomplished,

1 The sacrifice which is to be performed at the end of the dark and the beginning of the bright half of a month.

2 The sacrifice which is to be performed at the end of the bright half and the beginning of the dark half.

3 i. e. as it has been presented by a *Sruti* text.

and not the principal place, as it may also occur in regard to acts not desired.

PAGE 66\* And therefore the rule as to the form and qualities of gold is not in repetition of a rule regarding wearing, owing to the non-realisation of the rule as to the wearing as part of a sacrifice, and also as wearing may be seen among the people. Therefore the wearing of gold is not for a religious purpose. If it be a rule there must be the result. That result would, in the absence of an *Arthavāda*,<sup>1</sup> be heaven under the *Viśvayajñ*<sup>2</sup> maxim. With an *Arthavāda*, however, it would be in itself under the *Rātrisatra*<sup>3</sup> maxim. Here however on account of the *Śruti* text viz. "his enemy becomes uncomely", the uncomeliness of the enemy and the comeliness of self are the results and thus the established final conclusion is that the wearing of the gold is for a worldly purpose. 5 10

Tadastu pāratantryamiti (p. 93 l. 20) let there be dependence &c. 15  
(p. 239 l. 7). 'Dependence' i. e. the state of not<sup>4</sup> being-alone. Hence there would be no conflict even if she took her husband's wealth.

Yajñārthamevārjitam yaddhanamiti (p. 93 l. 21) wealth which was obtained for the (express) purpose of a sacrifice &c. (p. 239 ll. 10-11). In

- 1 Laugākṣhi defines an *Arthavāda* as वास्तव्यनिन्द्यान्वर वास्त्वर्थवाद्, etc. Sentences whose purport is either praise (glorification) or blame are called *Arthavādas*. Such sentences effect a purpose by a *Lakṣhapā*. It is from the praise or blame that an inference is to be drawn as to whether a certain act is prohibited or permitted. It is found in two forms, viz. as part of a *Vidhi* or of a *Nishedha*. It is of three kinds as will be seen from the following. विरोधि उपवाद. स्वादृशवादोऽन्यथारिति । वृत्तार्थवादस्तद्व्यापार्थवादश्चिन्ता मत्तः ॥

- 2 विभाजनस्याय This has been set out in Jaimini's Fourth Adhyāya Third Pāda and Sutrās 5, 6 and 7. The *Adhikarana* made up by these Sutrās is called the *Viśvayajñadadhikarana*. According to this maxim, where in an *Arthavāda* sentence a rule has been stated but no result is mentioned, it being necessary for all *Vidhi* sentences to have a result, a result has to be imagined, and one thus imagined is the heaven.

In order that this maxim may apply, two conditions are necessary. (1) There should be no mention of the कल or result (2) nor should it have been stated in connection with or proximity to an act having a fruit or result (कलवाक्यम्).

- 3 अविन्ययवाच—Where in the sentence laying down the injunction or *Vidhi* the result or कल is not stated, there the result incorporated in a sentence containing an *Arthavāda* is deduced e.g. अतिविश्रुती न etc. According to this maxim that construction is preferable which is never to the liberal construction, even though by it you get only a non-obligatory text and not an obligatory text. (See Jaimini IV. 3. 17-19).

- 4 अविश्रुतिः It appears there is an अवग्रह after एकाकिनीपूषा, so that the correct reading would be एकाकिनीपूषाद्विश्रुतिः. See Bālabhāṭṭi, which makes this clear.

the text : "Wealth was produced for the sake of a sacrifice" there is no rule by way of an injunction that "wealth produced is for a sacrifice" but that it means assuming that wealth was obtained by alms<sup>1</sup> for a sacrifice by approaching the King (and received from him), as for a sacrifice i. e. intending it for a sacrifice, such wealth must be used by him for a sacrifice only. If through greed or the like such use be not made by him, even the sons should use it for religious purposes only, and thus the rule laid down is that wealth obtained for a sacrifice must invariably be used for a religious purpose. And hence therefore that wealth must not be taken by those who are not appointed for a religious act, since they have no authority to perform a religious act. And hence also has it been said that "(she should) get just enough for food and clothing".

*Doṣhaśrawaṇasya putrādishwapyaviśeṣhāditi* (p. 93 l. 22) *has been declared to be an offence even in the case of sons and other successors generally* (p. 239 ll. 13-14). The meaning is that in the text<sup>2</sup> "...articles for a sacrifice...disposes not..." the rule has been stated generally without specifying the name of the acquirer, but as in "One must not speak an untruth", having been directed for all men, the acquirer as also his sons and the rest incur a sin by not appropriating for a sacrifice wealth intended for a sacrifice.

The Author explains the aforestated text of *Kātyāyana* : *Adāyikam dāyadārṣhitamityādinā* (p. 93 l. 12) *Heirless property or wealth which is without an heir &c.* (p. 239 ll. 20-21). The Author expounds the second half of this very text of *Kātyāyana* : *Asyāpawāda iti* (p. 93 l. 27) *an exception &c.* (p. 240 l. 3)

Having thus expounded the text the Author explains a conflict in it : *Etadapyawaruddhastriṣṭayamiti* (p. 93 l. 27). *Even this relates to women kept in concubinage &c.* (p. 24 ll. 6-7). There the cause : *Yoshidgrahaṇāditi* (p. 93 l. 27) *For the term employed is females &c.* (p. 24 l. 7) *Anyatra brāhmaṇāt kintviti* (l. 28) *except...of a Brāhmaṇa, but &c.* (p. 240 l. 9). The point of the text<sup>3</sup> viz. "Heirless property goes to the King &c". being an introduction preceding the text of *Nārada*, the application here should be made in conformity with the sequence of the context. Excepting that of a *Brāhmaṇa* heirless property goes to the king. But even there, for his women maintenance should be given.

1 *दानमिदं* *Lit* : by a begging round for a sacrifice.

2 Cf *Manu* II. 25 cited above.

3 Viz. of *Kātyāyana* stated above.

The Author sums up his case (thus) demonstrated : *Tasmādwibhaktāsamsr̥ṣṭīnīti* (p. 93 l. 20) *Therefore...a separated not re-united &c.* (p. 240 ll. 14-15)

It may be said, indeed, a summing up is proper only of what has been stated. Moreover what has been said above and summarised, has not been stated either in the text "the wife, daughters &c," nor in its commentary ; how then can that be stated in the summing up ?

Anticipating this, and considering that it is right that all statements should be so directed that they must not<sup>1</sup> conflict with others, and desiring to point out that by regard to the contextual sequence of what has been said and will be said hereafter, such and such a point has been obtained and thus in effect it would be a summary of what has been said, the Author reminds of what has been stated and points out what will be said hereafter : *Vibhāgasyoktatwādīti* (p. 93 l. 30) *Partition had been discussed* (p. 240 l. 17).

The Author (now) wishes to point out that the interpretations put on the text of Yājñavalkya and others viz. "The wife, daughters &c." and the like, vesting a right in the wife and others, viz. that if the property be small then the property of a sonless man the wife may take &c. (that)<sup>2</sup> has been refuted, what will now be said, so the Author says : *Etenālpadhanaviṣhayatwamīti* (p. 93. l. 32.) *restricting to a small portion of the property (is refuted) by this* (p. 24. l. 19.)

The Author sets out the method of the refutation : *Tathā hītyādinā* (p. 93. l. 32.) *For even &c.* (p. 220. l. 20.) *Jīwadwibhāge ajīve cheti* (p. 94. l. 1.) *partition made in owner's life-time or after his decease &c.* (p. 240. l. 21.) i. e. whether the husband be living or dead.

*Wyāmohamāttransīti* (p. 94. l. 3) *a mere error &c.* (p. 241. l. 1.) The meaning is that when whether during the life-time of the husband or after the husband's death and when there are sons, the wife has the right to a share equal to that of a son and not a bare maintenance, then is it necessary to be said that of a man devoid of issue she gets the entire property ; thus even by the *a fortiori* rule the right of the wife to the entire property being established, a statement that she does not get more than (a bare) maintenance and raiment is a mere delusion.

1 There is a mistake in the print. On p. 66. l. 23 for *स्वेतस्वाम्याविरोधैव* read *स्वेतस्वाम्याविरोधैव*.

2 For *इद्* read *तद्* in l. 27. on p. 66.



Moreover, in the absence of the other sons entitled to take a share, her right to a share equal to that of a son who is entitled to the entire property having been stated it is consonant with reason also that "of one separated and without issue, the wife takes the estate". Therefore this statement of persons oblivious of what has been stated before and after, must certainly be disregarded.

The Author anticipates a suggestion that the words 'equal portions' are (used as) indicative of money useful for a subsistence : *Atha patnyaḥ Kāryā itī* (p. 94. l. 3.) *But...his wives must be made &c.* (p. 241. ll. 3-4.) *Refutes, Tadasad itī* (p. 94. l. 4.) *that is wrong* (p. 241. l. 6.) This is the meaning : The words equal and portions are known among the people as indicating a share and an equality according to their root meaning. And it would be meaningless to give up their own meaning without a cause.

It may be said that these words may signify their own meaning as an alternative course, and so there is not entirely a meaninglessness. Anticipating this particular objection, the Author says : *Syānmatamīti* (p. 94. l. 5.) *Or it may be said &c.* (p. 241. l. 9.) *Refutes, Tachcha netī* (l. 6.) *That too would be wrong &c.* (p. 241. l. 11.)

The Author indicates the nature of the variableness in the precept : *Tathā hityādīnā* (p. 93. l. 6.) *since &c.* (l. 12.) This is the meaning : The two texts of "The wives should be given equal shares", "the mother also shall take an equal share" by regard to another rule viz. "They should also be maintained" and like others lay down the rule that in the case of a husband with ample wealth, whether living or dead, at the time of a partition with the sons a wife should get property barely useful for maintenance ; in the case of a husband with small wealth, however, it states a rule that the wife shall take a share equal to that of her son.

A sentence once uttered is in one place dependent and in another not dependent, and thus has no one character, and there is a variableness in the precept in this case, as by taking the present as an illustration the Author points out the *Adhikaraṇa* treating of this rule *Tathā chāturmāsyeṣhu ityādīnā* (p. 94. l. 8.) *Thus in the instance of the Chāturmāsya sacrifices &c.* (p. 241. l. 19.). This is an *Adhikaraṇa* in the Seventh (Adhyāya) and the Third Pāda.<sup>1</sup> "On the other hand,

<sup>1</sup> Jaimini Sūtra VII. 3. 19. See note 7 in the Mītākṣharā pp. 242-244.

the carrying of the fire pertains to the Soma sacrifice, because the other is not ordained".

In the Soma sacrifice, the carrying of the fire is with special characteristics, while the carrying of the fire in the *Darśa* and *Pūrnamāsa* sacrifices with no special characteristics "carrying the fire" means carrying the fire from the Gārhapatya altar to the Āhawaniya. The northern altar, moreover, is only in the Soma sacrifice and not in the *Darśa* or *Pūrnamāsa*. Such is the position regarding the performance.

In this state of things the Chāturmāsya means four performances viz. *Vaiśvadeva*, *Varunaṣpraghāsa*, *Sākamedha* and *Sunāsiriya*. There are texts in the *Smṛti* "They carry in two, therefore with two they go; or these two are the thighs of the sacrifice". Here is a sentence laying down the rule in "In two i. e. of the two parts of the *Chaturmāsya*, they carry". While in "therefore with two they go" i. e. approach the fruit is an *Arthawāda* sentence.

There a doubt arises, viz. by the clause "They carry in two" a carrying has been laid down similar to the carrying in the Soma sacrifice. This is what is (intended to be) said. Is the carrying to be done like the carrying done in the Soma sacrifice, or is it that a carrying generally<sup>1</sup> has been prescribed. The first party maintains that it is proper to say that the carrying prescribed is the carrying like as is done in the Soma sacrifice, as it is only by an extension that the carrying generally could be predicated in the case of the *Darśa* and *Pūrnamāsa* where it is the basic act<sup>2</sup>, and thus carrying generally would be meaningless.

It may be said, let the carrying be a repetition of the carrying which is done under a command, why treat it as a *Vidhi* (a command). The answer is no. A *Vidhi* is inferred on account of the injunctive termination in the word *pranayantu* 'they carry'. Moreover by the two sentences "the northern altar is not to be established in the *Vaiśvadeva* nor in the *Sunāsiriya*" a prohibition for a northern altar has been stated in regard to the two portions viz. *Vaiśvadeva* and *Sunāsiriya*. While under the rule as to 'carrying, like as in the Soma sacrifice', the northern altar is also reached, but in the carrying in the (case of

1 *per contra* as is done in the Soma sacrifice

2 ऋति (as opposed to विधि) -- The basic procedure containing parts which are common for all occasions, the variations suited for each particular occasion being known as विधि. See Note 7 on p. 242 of the *Mitākshari*.

the) *Darsa* and *Pūrṇamāsa* the Northern altar is absent, and thus the carrying being reached, but the northern altar being not reached, the prohibition contained in passages such as "Not in the *Vaiśvadeva* is the Northern altar to be established", and the like does not hold.

- 5 It may be said, indeed, when (once) the northern altar has been reached by reason of the direction as to the carrying of the fire after the manner of the carrying in the Soma sacrifice, what is (the meaning of) this attempt at catching a rogue by asserting a prohibition that for the northern altar there will not be the *Vaiśvadeva*? If it be argued that
- 10 by reason of the fact that on account of the clause "In this, the Northern altar is to be established" occurring in the *Chāturmāsya* sacrifice, the northern altar having been ordained, the two clauses viz. "Not in the *Vaiśvadeva* &c." would be prohibitive of the northern altar which has been reached under the command, the answer is, no. The clause "In
- 15 this the northern altar is to be established" ordains a northern altar for the *Chāturmāsya* quite generally and without reservation and even for all the four portions. (While) by the two sentences viz. "Not in the *Vaiśvadeva*" a prohibition has been laid down in the case of the two portions, and thus a positive and a negative injunction existing in
- 20 the sentences, on account of the equality (of the two) an option is reached. And hence the following meaning is obtained. The clause "In this the northern altar is to be established" shall (be taken to) ordain a northern altar only when the observance of the
- PAGE 68\* negative rule contained in "Not in the *Śundāsīriya* &c.". has no scope in reference to the two clauses negating
- 25 it in the case of the two portions of *Vaiśvadeva* and *Śundāsīriya*. While in the case of the other two portions, it ordains as usual, the northern altar. In that way, in the case of two portions, the northern altar is ordained without regard to any other sentence, while in the case of the other
- 30 two portions, the injunction is in one alternative by regard to another sentence, and thus there would be the fault of a variableness in the precept, therefore the rule is that the carrying is to be after the manner of the carrying in the *Soma* sacrifice.

- The (*Rāddhāntin*) advocate of the final conclusion, however, says
- 35 that as there is a termination indicative of a command, the carrying of the fire must be (taken as) a command, and by the very reason of its being a command, it appears that this carrying is different from the carrying in the case of the *Darsa* and *Pūrṇamāsa* sacrifices.

It must not, however, be said that there is nothing particular in this as regards the act on the ground that merely starting the carrying generally does not become an extension but is merely a recommendation. Therefore the *Arthawāda* contained in the passage "therefore with two they carry &c". being in conformity with the command is reconcilable with it and may therefore be regarded as authority. Moreover, on the strength of the *Arthawāda* the northern altar having been established in the conclusion in regard to the two middle<sup>1</sup> parts, there is a speciality even in its performance, as will be declared hereafter by the *Guru* in the later<sup>2</sup> *Adhikarana* in the established conclusions.

Then, the two sentences viz: not in the *Vaiśvadeva* sacrifice is the Northern altar established, nor in the *Śundāsiriya* are a permanent *Anuvāda* of the first and the last portions. The clause "In this is the Northern altar to be established" has the effect of having the Northern altar for the middling portion only and thus the Northern altar not being in all the four portions, there is no variableness of the precept also, and having been ordained only after the carrying of the fire, there is no carrying for the first and the last, as the Northern altar has been prohibited.

There is a text in the *Śruti* viz. "They carry in two". There a doubt arises: Is this carrying of the fire ordained for two portions for the first and the last portions or for the middling ones? The first Party maintains that the carrying of the fire is for the first and the last portions, as by the text "not in the *Vaiśvadeva* nor in the *Śundāsiriya* &c" the northern altar has been prohibited for the first and the last portions, and a prohibition of a thing is not possible unless it is reached.<sup>3</sup> The *Arthawāda* sentences viz. "These two are the thighs of the sacrifice-the *Varunapraghāsa* and the *Śākamedha*" and "therefore with two they go." as also the text "They carry in two", having an application to the middling portions, there also is the carrying. And by the text "Not in the *Vaiśvadeva* is the Northern altar established, nor in the *Śundāsiriya*" is a constant repetition as to the first and the last portions. This is the established conclusion.

Now we resume the point under consideration. In the *Chāturmāsya* sacrifices, by the text "They carry in two" the carrying of the fire

1 i. e. the *Varunapraghāsa* and *Śākamedha*

2 i. e. in the 10th *Adhikaraṇa* known as मध्यमवेदोद्देशेन प्रवक्ष्यामि वरजम्.

3 A prohibition will have no scope unless its object has been established before. For a prohibition of that which does not exist is meaningless.

has been ordained. There the First Party maintains that the carrying ordained here is after the manner of the carrying of fire in the *Soma* sacrifice. The import being that the carrying should be made just as the carrying of the fire is done in the *Soma* sacrifice. In this state of things the inference is that the carrying of the fire is ordained, and the inference cannot be of extension from the clause "like the *Soma* sacrifice". And thus anticipating a question, what is the reason for the extension as in "should be done like that"? The answer would be that the two sentences "Not in the *Vaiśvadeva* nor in the *Śundāsiriya*" prohibitive of the Northern altar contemplate the existence of the Northern altar and its existence also under the text "Like the *Soma* sacrifice" having been reached by an extended application, the Northern altar also becomes established possessed of all the characteristics thereof, and thus the prohibitive texts themselves are the cause of the command about the carrying of the fire after the manner of the carrying in the *Soma* sacrifice.

This is the substance of the position of the First Party, which the Author states : *Dwayoḥ prañayantītyatra purvapakṣhiṣṭyādīnā vedipratīṣṭhedho darśita ityantena* (p. 96 ll. 9-10) Beginning with *dwayoḥ prañayanti...by the opponent* (p. 241 l. 20) and ending with *extend...prohibitions &c.* (p. (241 ll. 22-25).

A prohibition contemplates a previous existence. And that previous existence, even without the carrying of the fire as in the *Soma* sacrifice, but by reason of its being stated in connection with the *Chāturmāsya-yāga* in the texts "In this the Northern altar should be established" and the establishment of the Northern altar being for the First and the last portions viz the *Vaiśvadeva* and *Śundāsiriya* sacrifices having been reached, and thus the prohibitive rule having been established by sentences like "Not in the *Vaiśvadeva*" and the like the position of the First Party that the carrying of the fire should be performed similarly as in the *Soma* sacrifice does not hold: Thus the Author refutes the position of the First Party : *Rāddhāntaikaśeṇetyādīnā pratīṣṭhedhoyamityabhīhita ityantena* (p. 94 ll. 10-11). Beginning with *by an advocate of the right opinion* (p. 242 l. 1) and ending with *it is urged...with reference to a prohibition of it &c.* (p. 242 ll. 6-8).

It may be argued, indeed, then in this way the sentence viz, "In this the Northern altar is to be established" ordains the Northern altar even for all the four portions, while the two clauses "Not in the *Vaiśvadeva* sacrifice is the Northern altar to be established, nor in the *Śundāsiriya*"

prohibit the Northern altar for two portions. Thus on account of the two alternatives of a positive and negative command in regard to the Northern altar under express texts, in the establishment of the Northern altar comes to be an alternative course, and so there is a case for an option. From that also the following will be the result : The clause "In this the Northern altar is to be established" is to be taken as ordaining the establishment of the Northern altar as an alternative also it is not prohibited by sentences like the two viz. "Not in the *Vaisvadeva* &c" and like others in regard to the first and the last portions. While as regards the middling portions, even without regard to the prohibitive texts it causes these to be reached as under a *nitya* <sup>1</sup> *vidhi* and thus the same sentence once uttered is applicable as an alternative course in one case, while in another case it is absolutely binding, and so by reason of an absence of a uniform application there would be a variableness in the precept, thus the upholder of the First Party refutes the view of one side of the advocate of the correct view, so the Author says *Punah purvapakṣhiṇetyādinaṁ vidhivaishamyam darśitamityantena* (p. 94 ll. 12-13) Beginning with *it is urged in reply by the opponent* (p. 242 l. 6.) and ending with *has shown the variableness of the precept* (l. ).

After a side of the correct opinion, it is proper that the principal view of the correct opinion should be known and the statement viz. "again the First Party &c". is to be understood as with a view that there may not be any confusion about it.

The Author states the right doctrine *Rāddhāntepīti* ( p. 94 l. 14) *even as the right opinion &c.* (p. 24 l. 13). While laying down the rules in accordance with the view of a side of the correct opinion, a variableness of the precept is unavoidable, and the text "They carry in two, therefore with two they go, and they are the two thighs of the sacrifice" being of an *Arthavāda* nature and applicable to the two middling portions, the carrying of the fire will be there only, as wherever the carrying there only will be the Northern altar and the command about the establishment of the Northern altar viz. "In this the Northern altar is to be established" being also in the nature of an *Arthavāda*, the Northern altar will also be in the same two portions. The Northern altar not being possible in the First or the Last,

1 A *nitya* *vidhi* is that which is absolutely binding on all persons, and not dependent on any act or choice, distinguished from it is the *Karma* *vidhi* which comes into force only in the event of the performer having chosen to do some act voluntarily

the text "Not in the *Vaitwadeva* &c." is a repetition of a perpetual precept as to the First and the Last portions after the manner of the text "Neither in the firmament nor in the heaven is the fire to be kindled". This is the meaning.

By this collection of literature viz. "Among the Chāturmāsya sacrifices" &c., this is what is (intended to be) said : As there in the opinion of the side of the correct opinion there would be the fault of the variableness of the precept, so in the texts viz. "The wives should be made partakers of an equal share", "The mother also shall take an equal share", the words share and equal though once uttered in the case of the husband having considerable wealth by regard to the text "and shall also provide for the maintenance of his &c." and like others are to be interpreted as ordaining wealth necessary for their maintenance, while in the case of his having small property, without regard to other texts, as indicating an invariable rule for a share equal to that of a son. This is the exposition of *Śrīkara* and others also and there also the fault of the variableness of the precept is unavoidable.

Some other writers also have pointed out an adjustment of the texts "the wife, the daughters" &c. Desiring to refute it the Author points it out : *Yadapi matamityādīnā* (p. 94 l. 17) *Again as to the doctrine* &c. (p. 244 l. 1). The Author states the meaning in substance of the texts of *Manu* and *Śankha* : *Aputrasya dhanam bhrātṛgāmīti* (p. 94 l. 19) *The wealth of a man, leaving no male issue goes to his brothers* &c. (p. 244 l. 7).

The Author states the meaning in substance of the text of *Nārada* : *Bharaṇopayūktam dhanam patnī labhate ityapi sthītamīti* (l. 20). *It also becomes established that the wife obtains (as much) wealth (as is) sufficient for her maintenance* &c. (p. 244 ll. 9-10). In this way as stated above when it becomes established that the wealth of a brother dying without issue goes to the other brothers, and his wife also gets property sufficient for her maintenance, she whose husband is without issue but had plenty of wealth, on his demise these two things occur viz. the brothers take the inheritance, and the wife gets bare maintenance.

If, however, the wealth be just sufficient for the maintenance of the wife or even not sufficient, then a doubt would arise as to whether under the authority of the texts of *Manu* and *Śankha* the brothers take, or under the text of *Nārada* the wife alone takes, and with a view to remove it the Lord of the Yogis, by reason of the fact that no

conflict had arisen, and on account of the rule that the prior is stronger, and intending to make a statement demonstrating the order the wife alone will take and so the text "the wife and the daughters" has been begun, so the Author says: *Evam sthite bahudhana ityâdinâ ityâ-rabdhāmityantena* (p. 94 ll. 20-23). Beginning with *this being so if a rich man* (p. 244 l. 10) and ending with.....*has been propounded &c.* (l. 15). That is, the meaning is, that the wife does not always become the inheritor of the entire property of a sonless man.

The Author refutes: *Tadapyatreṭi* (p. 94 l. 23). *This opinion too* (p. 244 l. 17). "The Revered Teacher" i. e. the *Viśvarupâchârya*. The meaning is that because of the reason that the text of *Manu viz.* "Of him who leaves no male issue, the father shall take the inheritance" has another meaning.

The Author points out that very other meaning, *Yataḥ pitā hareḍityâ-dinâ* (p. 94 l. 24) beginning with *For...the text "the father shall take &c."* (p. 244 ll. 18-19). This is the meaning: This text cannot be taken as laying down the order of succession for an inheritance by "the father &c," by which the adjustment stated above may stand, but on the other hand it is intended to indicate the right by stating that even the father and the others have a right to take the heritage, as an option is inferable from the word 'or' (*avā*) in the text. "...the inheritance, or even brothers &c." (p. 245 l. 9), and an option occurs in equals alone. If an order be intended viz. that "in the absence of the father or other heirs", a prominence is inferable for the father and thus there being an absence of equality between him and others the thought of an option is inadmissible. Thus taking the text of *Manu* as indicative of a right and enumerating as "wife or the daughter," and then even after enumerating the father and brother under the text "the father shall take of one who leaves no male issue" the right of the father and the brother certainly holds, and then it would be improper to say that the text "the wife, the daughter &c.", is with the object of stating that only the property which is sufficient for maintenance or even less than that goes to the wife.

The Author points out the text of *Śankha viz.* "The wealth of a man, who departs for heaven, leaving no male issue" is explained in a different manner by the Revered Teacher: *Śankhavachanamapi samśrṣṭabhratrviśhayamiti* (p. 74 l. 26) also the text of *Śankha* relates to re-united brothers &c. (p. 245 l. 5) i. e. relating to (such) brothers as out of a feeling of affection or the like have become united after partition and continued to be so.



Asmādwachanāt prakarṇāditi (p. 241. 20) *From this text 'or from the context &c.* (p. 245 l. 7) i. e. from the text "the wife, the daughter &c".

Moreover, if the text "the wife the daughters &c" be taken as indicating that the wife takes a small wealth as also the remaining portion of the text viz. "On failure of the prior among these the next in order is heir to the estate &c" if it be argued that from a consideration of the text viz. "And they should provide for the maintenance of the wives of him for their life-time" if the property be just sufficient for maintenance then only the wife, failing her the daughter takes, and not if there be much wealth, then it would bring the property to the wife and the daughter as a contingent alternative, while in the case of the father, brother and their sons however the succession to the inheritance is indicated as an absolute rule without regard to other texts.

The Author suggests that the fault of the variableness of the precept is inherent in this also, same as stated above, so he says, *Dhāna-bhāguttarottara ityasya chetyādīnā* (p. 90 l. 27) under the text beginning with *on failure of the first of these the next in order shall be heir &c.* (p. 255 ll. 7-8). "From this very passage" (l. 17) i. e. from the text of *Hārīta. Etadevābhipretyoktamiti* (p. 92 l. 31) and with this same view it has been said &c. (pp. 265 l. 18 op. 266 l. 1). The meaning is that one who is not suspected of incontinency, takes the entire property. The Author concludes *Tasmāditi* (p. 96 l. 2) *Therefore &c.* (p. 246 l. 6).

*Duhitara iti* (p. 95 l. 4). *daughters &c.* (p. 246 l. 11.) Here through the principal term daughter every kind of female issue is intended to be stated, and this quality of being a female issue is uniform even in (the case of) other castes. By the termination, moreover, the plurality in castes also is inferred. That, moreover, is uncontradicted even in regard to daughters of different castes. Therefore by reason of the principal term and the termination daughters of equal and unequal castes are inferred.

These, moreover, shall take equal and unequal shares in the ratio of four, three, two, and one in their respective order, so the Author says : *Duhitara iti bahuvachanamiti* (p. 95 l. 5). *The plural is used in 'the daughters &c'* (p. 246 l. 12). *Angādangātsambhavat-iti* (l. 7) *proceeds from his several limbs &c.* (p. 246 ll. 18-19) i. e. is formed from all the organs. *Tathā praliṣṭhititāpraliṣṭhitāsamawāye iti* (p. 95 l. 9). *moreover if the competition be between an enriched and unprovided for daughter &c.* (p. 246 ll. 19-20) *Praliṣṭhitāḥ*—provided

i. e. enriched. "Unprovided" i. e. with money &c. *Stridhanam duhitṛṣāmiti* (p. 95 l. 10). *A woman's property goes to her daughters &c.* (p. 247 l. 1). The meaning is that the woman's property goes to unmarried daughters. Failing these, to the moneyless.

It may be said that this text of Gautama has a reference to the mother's property and not to the father's property, so the Author says : *Pitṛdhanepi samānatwāditi* (l. 10) *is equally applicable to the case of the father's estate &c.* (p. 247 l. 2). This is the meaning : By the text "The woman's property goes to the daughters", &c. the rule relating to daughters has been laid with reference to the property of a woman, and thus the qualification of the object intended, the woman is meant without a particularisation, and hence the generality of the rule.

It may be urged, that the text "the wife, the daughters &c" states the right of an appointed daughter to the property in the absence of the wife, and not any (kind of) daughter, in which case (alone) can be the order, in the absence of the unmarried, the unprovided, and in their absence the provided &c. Anticipating such an objection, the Author refutes : *Na Chaitatputrikāviṣhayamityādinā* (p. 96 l. 7) *nor..... that this relates to the appointed daughter &c.* (p. 247 l. 3). The meaning is that having already been mentioned in the chapter on sons, it is inappropriate to state it again.

The Author explains according to its import the word 'also' (*cha*) in the text "the wife, the daughters also &c." : *Chasabdāt duhitṛabbhāve iti* (p. 95 l. 13). *By the particle cha, on failure of daughters &c.* (p. 24 l. 7). *Aputrapautrasantāna iti* (p. 95 l. 13). *If neither son, nor son's son, nor issue &c.* (p. 247 l. 9). The issue in the form of the son, the grandson and the rest ; The absence of that is having neither son, grandson nor issue. When such a thing occurs i. e. in the absence<sup>1</sup> of the son, grandson and daughters, the sons of the daughters alone, who are in the place of the son's sons, shall take the wealth. "Of ancestors" i. e. of the maternal grandfather and the like ; "in regard to the performance of obsequies" i. e. the *Śrāddha* and the like, the daughter's sons are considered i. e. regarded, as son's sons. They are indeed entitled. The meaning is that in regard to *Śrāddha* and the like, the daughter's sons are alone regarded as in the place of the son's sons.

1 i. e. where there are no sons grand-sons, or other issue as is the other reading  
नारिभग्नगति ।

Akr̥tā wā kṛtā wāpīti (p. 95 l. 15): *Whether not appointed or appointed &c.* (p. 248 l. 1). *Whether appointed as a daughter or not so appointed, by reason of her being a daughter. "From an equal" i. e. from one of the same class, a son which she obtains, by that son, the maternal grandfather becomes a paternal grandfather i. e. one having a son's son. He shall take his property and also offer the funeral cake. This is the meaning.*

In the term "the parents" the semi-residual (Dwandwa) compound is intended, so the Author says: Pitaru mātāpitarāwiti (p. 95 l. 16)  
10 *the two parents i. e. the mother and the father &c.* (p. 248 l. 6).

It may be said, in the absence of the daughter, and the daughter's son, the right of succession to the property for the two parents has been laid down. There on account of the semi-residual compound a question may arise viz. is the succession to the property jointly-by  
15 them, or severally each, and there also, is the order of succession optional or has it been fixed for each, so the Author says: Yadapiti (l. 16). *Although &c.* (p. 248 l. 8).

This is the meaning: According to the rule of grammar<sup>1</sup> the "Dual  
20 PAGE 71\* (Dwandwa) compound is used to express cumulation"  
A dual compound laying down the mutual conjunction or the aggregation of things, gives prominence to both the things. And therefore in the dual compound the importance of the first or the latter word is equal, otherwise the two words will not have equal prominence. In this state of things under the rule of grammar<sup>2</sup> viz. "The word 'pitr'  
25 (is optionally only retained when spoken of) along with mātṛ", one word having been dropped, even if no order is indicated in the compound expressed by the remaining word *Pitr* (father) or even of the term *pitarau*, as these are expressive of a simultaneousness still the mother and the father occur in the sentence expressing the dissolution of the compound, and having regard to the rule of grammar<sup>3</sup> viz  
30 "(in a dual compound) the more honoured is (placed) first", the word *mātṛ* being placed first; and even when there is no semi-residual compound, in the compound also the expression being "the mother and the father" the word mother is heard first, and thus in either case the word mother is uttered first, the order as to the meaning is deducible  
35 from the order of the pronunciation of the words. In the present case also, in the case of the necessity for determining the order in regard to

1 Pāṇini II, 2, 29.

2 I. 2, 70.

3 अन्वयिष्ये च द्वे द्वे रूपेण B. K. 209.

succession to property no other order being available the order should be the one inferrable in pursuance of the order in the dissolution (of the compound), and so the right of the father to the property should be understood to be in the absence of the mother.

The mother having an uncommon relationship towards her own sons, her propinquity is much more intense as compared with that of the father. The fatherhood of the father is common towards sons born of a wife of the same *varna* as also towards sons born of the Kshatriyā and other wives, while as considered from the mother there is no commonness and the propinquity is nearer, and thus the mother has a greater propinquity.

Moreover by the text "He who is the nearest *sapinda* &c." a rule having been laid down that the property of a *sapinda* goes to that near *sapinda* who is nearest of the *sapindas*, the mother alone is entitled to succeed first to the property, so the Author says : Kincha pitā putrāntāreṣhwityādīnā (p. 95 ll. 20-21) beginning with *besides, the father is.....to the other sons &c.* (p. 250 l. 4). Although by reason of his having greater parts of father's body the son has greater propinquity to the father as compared with the mother, and this is the basic reason for propinquity, still, among other sons the father being the common (parent) and the mother not common, and on account of the fact that this closely related female member unremote, and by the one-membered word "the two parents", having the order as set out in its dissolution, this order (of succession) itself is better. This is the import.

It may be said, indeed, among the people the cause is seen to be immediately allied. In the text, "the nearest among the *sapindas* &c." by the use of the word *Sapinda*, it is only among the *Sapindas* that propinquity is regarded as the cause for succession to property, and not among the *Samānodakas*. There another reason must be mentioned. Let that also be among the *Sapindas* even, why this propinquity? Anticipating this, the Author states that the term *Sapinda* is expressive by implication of the *Samānodakas* also. Therefore by this very text is propinquity the cause for succession to property in the case of both, so the Author says : Na cha sapinḍeṣhwewetyādīnā (p. 95. l. 22.) Nor... restricted to *Sapindas* &c. (p. 250. l. 8). Riktham bhrātara eva well (p. 96. l. 2.) the inheritance or the brothers &c. (p. 251. l. 5.) Here the word (*ud*) 'or' is indicative of an adjustment<sup>1</sup> of the option.

1 See note 6 on p 35 of the *Mitākāra*

It has been stated that in the absence of the mother, the father shall take the inheritance. Others have stated it otherwise. With a view to refute that, the Author offers supplementary comments after the manner of the lion's backward<sup>1</sup>: *gāze Yatpunardhâreśwareṇetyâdinâ*  
 5 ( p. 96. l. 2. ) *As to what...by Dhârçivara &c. ( p. 251. l. 6. )*

This is the import: Property taken by the father is the father's property and becomes even of the sons of the kind of the caste of *Mîrdhâvasikta*<sup>2</sup>, while as regards property taken by the paternal grandmother, being the mother's property, it goes to her daughters, failing  
 10 these to the daughter's sons, sons and the rest in order, and thus would go to heirs of the same caste only, in this way under the text of *Manu* thus expanded by a reasoning like the above, in the absence of the mother, the grandmother shall take. But this the venerable Teacher the professor of *Nyāya* the *Viśvarupâchârya* does not accept,  
 15 and so the Author (also) refutes: *Etadapyâchârya iti ( p. 96. l. 6. ) This even the Holy Teacher &c. ( p. 252. l. 1. )*

That may be so, if there be any thing wrong if the sons of a different caste take. But that is not so. On the other hand, these also have a right to the inheritance under an express text, and thus while  
 20 refuting the opinion of one side, the Author mentions a reason: *Vijātiyaputrâṇâmapiti ( p. 96. l. 6 ) of sons even dissimilar in class &c. ( p. 252. l. 2. )*

The text of *Manu* viz. "And if the mother also be dead, the father's mother shall take the heritage" is not to be explained as laying down  
 25 an order, but only that the father's mother also is entitled to succeed to the property and thus as expositive of her right. Or it should be expounded by taking as understood that after the mother, the father, the brother, his sons are heirs to the property in the order, and that failing these even the father's mother shall take. Or, there is no  
 30 necessity of taking anything as understood; by the text "the father's mother should take the heritage" the word father occurring there, indicates not only the father, but by an extension, the son and the grandson also born in his family. Because the utterance of the

1 *सिंहोद्विगच्छति*. It is used when one casts a retrospective glance at what he has left behind, while at the same time he is proceeding, just as the lion, while going onward in search of prey now and then bends his neck backward to see if anything be within his reach.

2 See *Yājñavalkya* I. 91. The issue born to a *Brāhmana* from a *Kṣatriyâ* wife.



because the right of succession to the property had become vested in their father, and (also) because sons have a right in the property of their father. There this is the special point (of distinction) between brothers and brothers' sons : the brothers obtain their own share, the  
5 brothers' sons the share of their father.

*Gotrajāḥ pitāmāhī sapinḍāḥ samānodakāścheṭi* (p. 96. 1. 16). *The Gotrajas are the paternal grandmother, the sapinḍās and samānodakās* (p. 254. 1. 1). The separation of the words in the compound should be thus : the paternal grandmother, and the *sapinḍās* and the *samānodakās*.

10 It may be asked, it is proper<sup>1</sup> that the paternal grand-mother should succeed to the property after the mother, how then is the text stating her succession after the brothers' sons ? Anticipating such a question, the Author says *Mātaryapi cha vṛttāyām piturmātā dhanam herediti Mātranantaram ityādinā* (p. 96. 11. 17-18). *And if the mother also be*  
15 *dead, the father's mother shall take the property; after the mother &c.* (p. 254. 1. 5.) This is the argument. The text of *Manu* viz. " If the mother also be dead &c." cited above being intended merely to indicate the right of succession to the property, has no reference in substance to the order (of succession). Having stated that in the absence of sons  
20 and grandsons, the daughters and sons of daughters become heirs to the property, and the text " the wife and the daughters also &c." and under the text " The two parents and the brothers also " the mother and father being unseparated, thereafter, being of the same *gotra*, being intensively connected by reason of their belonging to their own fathers'  
25 family and owing to their being immediately mentioned, and also on account of the remaining portion of the text stating that " on failure of the prior among them, the next in order is indeed. (heir) &c." the order of succession as far as the brothers and their sons being closely contiguous, not entering the paternal grandmother among these  
30 in the matter of succession to the property, the paternal grandmother being drawn and kept out as far as the sons of brothers, and there being hereafter no obstruction to the order of succession which occurs to the mind under the text " And if the mother also be dead, the paternal grandmother shall take the property. " and the text mention-  
35 ing the *gotrajas* after the brother's sons, following the line of succession suggested by the text of *Manu* the paternal grandmother alone by reason of her propinquity and also on account of her being a *gotraja*<sup>2</sup>. succeeds to the property only after the brothers' sons.

1 <sup>३</sup>क is the reading in all manuscripts. उक (stated) would be better.

2 The reading is गोत्रजासत and not गोत्रजसत as it should have been,

Here some (writers) have said, after the daughter's son the father and the mother are entitled to succeed simultaneously to the property, both being propinquitous, and hence also the two should take by dividing (among them), and not (in) the order, mother and in her absence the father. With this very object the semi-residual compound was made (use of) by Yājñavalkya. 5

Moreover, that an order is not inferred in a un-residual compound is instanced in the maxim<sup>1</sup> discussed in a topic in the First Pāda of the Fifth Book thus, "Or the (order of the) subordinate acts is according to the order of the principal acts, by reason of their being subservient to it". "There shall be two Sāraswata sacrifices". In this text two sacrifices with postherds as oblations have been ordained. That of which the deity is *Saraswatī* is a Sāraswata postherd. That of which the deity is *Saraswān* is a Saraswata. These two Saraswata sacrifices. Thus there is a semi-residual compound. In such a position a couple of verses<sup>2</sup> from the Vedas have been first recited in reference to a female goddess, and thereafter a couple of verses in regard to a male deity have been recited, and so the order of performance should be in accordance with the order of the recital of the hymns. This is the principal subject of the topic. 10 15 20

Now a consideration of the meaning of the topic. As this is a variant of the basic sacrifice with postherds, by an extension, the offering of four handfuls ordained there have to be performed. There a doubt arises. Should, the oblations be offered indiscriminately or whether first in regard to the female deity and thereafter addressed to the male deity is the oblation to be offered? There no order being inferable in regard to the offering of the oblation which was reached by the extended application, the position comes to be that the oblation should be offered without regard to (any) order; to which the reply is that the oblation should be offered in the same order in the principal sacrifice. As for the principal sacrifices, the order of their performance is in accordance with the order of recital of the pair<sup>3</sup> of verses to be recited at the sacrifice. 25 30 35

Therefore, the correct opinion is that the performance of the offering of the oblation should be in the same order as in the principal sacrifice,

1 Jaimini. V i. 14 This chapter deals with the question of the order of the performance of Acts. This is the 7th. Adhikaraṇam in this Pāda. (७०).

2 अथर्ववेदः a verse recited by the Hotṛ priest in which the deity is invoked to accept the offering prepared for him अथर्ववेदः तदभावे होत्राया देवताह्वानी कथं आह्वयः—Sacred texts handed down by tradition

3 युगल—a pair of verses



so that there may not be any departure from the established<sup>1</sup> rules as to the order (of performance).

Thus in this topic<sup>2</sup> in the sentence of extension viz. "Two sacrifices to sārṁswata occur", the order (of performance) not being determinable owing to the semi-residual compound the order of the performance of the sacrifices adopted was in substance<sup>3</sup> in pursuance of the order of the text as stated in the pair of verses to be repeated at the sacrifice.

Therefore here also in the text "the two parents, the brothers &c", by reason of the semi-residual compound in the expression "the two parents" no order being determinable, the position is that generally after the daughter's son, the mother and the father (would) simultaneously succeed to the property. In their absence the brothers; failing these, their sons. This text of the Lord of the Yogis which is based on a general rule stands<sup>4</sup> refuted by an express text of Kātyāyana as an express text preponderates over a general rule. That text moreover is (this): "When one separated dies, in the absence of sons, the father shall take the property, or the brother, or the mother, or his father's mother in the order". The meaning of this has thus been stated: The use of the term 'sons' is indicative by implication of (one) nearer in propinquity. Thus in the absence of sons, son's sons, the wife, the daughter and the daughter's son, the father succeeds first to the property.

Alleged faults in the Mitākṣharā. Faults have been pointed out in the exposition by the Author of the Mitākṣharā. These are as under (1) What has been stated viz that the greater propinquity is certainly that of the mother as the mother is not the common parent of the other sons, while the father is a parent common to all other sons, is wrong. Because (it is stated) there can be no discrimination as to propinquity between a mother and a father in regard to the issue.

(2) Another is that by the term *gotrajas* are expressed "the paternal grandmother, *sapṁṇas* and *samānodakas* also." And thus, under

1 वसित—measured.

2 अधिकरण.

3 अवगत.

4 Viśveśwara Bhaṭṭa states here the position of those who maintain that the father succeeds first.

From here Viśveśwara Bhaṭṭa is stating other objections raised against the conclusion of the Mitākṣharā. These are in substance a reproduction of the position in the Smṛticandrikā &c. and other writers See p. 297. II. 19 20, pp. 300 II. 10. 12.

the text "the two parents and brothers also" the order of heirs commencing with the sons and ending with the brother's sons being compact, the grandmother having no scope to enter in the midst, under the text. "If the mother also be dead, the father's mother shall take the property", after the mother, the paternal grandmother does not acquire the property. But being (thus) postponed obtains it after the brother's sons. All that is said above is also wrong. The expression *gotrajas* being a uni-residual compound of similar terms, the males alone are included. And also the order of succession of *gotrajas* with the brothers' sons stated before being compact with regard to the males, the males alone with out distinction being intended even then the paternal grandmother has no scope for an entry. In this way and similarly.

The Answer      The whole of this is inartistic. For, it is not that in a uni-residual compound the order (of words) cannot be determined. In the sentence of the dissolution (of the compound) and in the multi-residuals the fact that the mother has a prior place itself determines the order. If it be said that it has been stated in the text two "*sāraswata* sacrifices be offered", the answer is, no; there is no conflict with the rule propounded by that maxim. Moreover, *sāraswata* and *saraswatā* make two *sāraswatās*, and under the aphorism<sup>1</sup> "Of words having the same form, and in the same case termination, one is retained", there having a uni-residual, the order there cannot be determined even in the clause of dissolution, therefore in answer to an inquiry as to "which is the order here" it has been demonstrated that the order of the hymns in the *śruti* would be the proper order for the performance of the sacrifice in pursuance of the order of the pair of verses to be recited at the oblation, and not that in a uni-residual compound an order cannot be determined. In the present instance, regarding the compound term "The two parents" in the sentence of dissolution, it comes out to be a uni-residual compound of dissimilar terms under the aphorism<sup>2</sup> "The word *pitr*—father (is optionally only retained when spoken of along) with *mātr*—mother" the order being necessarily determined in the dissolution, that order must indeed be accepted.

As to what has been said that "There can be no discrimination as to propinquity between mother and father in regard to the issue" that also is stupid. By reason of conceiving, bearing, and feeding the fœtus

1 This has a reference to the rule of grammar contained in Pāṇini I 2.64.   
 नस्यतामिदंशब्दं एकविभक्तौ 'Of the words having the same form and all in the same case termination, the last one is not retained therefore गोवज + गोवज. + गोवज = गोवजा 2 I 2 70.

the mother certainly creates a greater propinquity in the issue; while the father only sows the seed. And things visible having greater preponderance over things invisible, by reason of conferring greater visible obligations, the mother's propinquity<sup>1</sup> is greater.

Also, as to what has been said that the expression *gotrajas* being a uni-residual compound of similar terms, and the order of succession being fixed by the brother and the brother's son, the paternal grand-mother cannot have an entry even after the brother's son, that is not sound. Even dissimilar persons such as women and men e. g. *gotrajas* and *gotrajas* can be expressed with one case-termination without a conflict as in *Jāti-dravya-guṇah*.<sup>2</sup>

Nor is the order compact. There is no compactness of order in heirs such as the father and others as far as brother's sons and the *gotrajas*. Therefore in the absence of the wife, the daughter, failing her the daughter's son, in his absence the mother, after her the father, failing him the brothers, in their absence the brothers sons, and in their absence the paternal grandmother. This is the order. As says Bṛhaspati "Of a son who had no wife and who is without issue, when dead, the mother should be known as the heir entitled to take the property, or the brother with her consent".

PAGE 74\*. The meaning of this: of him who has died without issue

his wife shall take the property. Failing her, the daughter; failing her, the daughter's son; in his absence, the mother, or with the mother's consent the brother of the deceased. Even if the brother takes, by the very fact of his having taken with the mother's consent, it is certainly (to be deemed to have been) taken by the mother, and this is the mother's right of succession to the property prior to the father.

Some say that in the text of Bṛhaspati the word daughter<sup>3</sup> is indicative, by implication, of the daughter, the daughter's son and the father. That is dull. Implication in words arises through inconclusiveness.<sup>4</sup> Thus everywhere unquestionably in the absence of the

1 सन्निकट. lit. means proximity, nearness, vicinity.

2 Here two things are to be noted. The plural of the word गोत्रज whether used in the masculine or feminine gender, is the same viz. गोत्रजाः. Also under the principles enunciated in I. 2, 67 युगान् द्विवचनं and illustrated in I. 2-63. as also the rules in I. 2.69-71, there is no conflict by the compound having one case termination.

3 Some copies read त्वर which does not hold with the context.

4 अतद्वचनं. Inconclusive reasoning, absence of reasonable grounds. cp. अर्थापत्तिः (अर्थस्य अन्वयार्थस्य जायते.) an inference from circumstances, a presumption (Apts.)

daughters the daughters' son has the right of succession to the property invariably in the texts and so after the daughters the inconclusiveness in the form of a conflict with other texts as also in the form of the issue of the daughter could be indicative, by implication, of the daughter and the daughters' son only and not of the father ; the inconclusiveness exhausting itself by that much. The exhaustion, moreover, in the text of *Manu* and other texts, of the father as immediately following the daughter's son is uncertain. Therefore by as much in the intended sense the inconclusiveness becomes exhausted, so much only is indicated by the word son by implication, and there is no deduction of the father after the daughter's son. 5 10

As for the text of *Kātyāyana* viz. "When one separated dies, in the absence of sons, the father shall take the property ; or the brother, or the mother, or his father's mother, in the order," here also the use of the word (*Wā*) 'or' is not indicative of order ; but only as indicating that these mentioned in the text are entitled, and thus indicative of the right only. In a thing which is self-formed such as what is called an owner, there being no (scope for) option, words like (*wā*) 'or' have the sense of 'even' (*api*), and not as has been stated by others, that the words (*wa*) 'or' are used in the sense of the absence of one prior and another prior thereof ; as the word (*wā*) 'or' not used by the learned in the sense of an absence, while it is used in the sense of (*api*) 'even'. 15 20

The word *Atha* also which is indicative of nearness does not convey the right of succession of the paternal grandmother immediately after the mother, as the sentence does not indicate order as has been explained (above). Therefore let it convey her right of succession immediately after the brother's son without interruption. Still the expression 'in order' without detriment to its own sense but by regard to the latter part of the text of the Lord of the Yogis viz. "On failure of the prior, the next in order", indicates an order which is not opposed to what is stated there, and not the order standing in its own sentence. Here, the expression 'in order' having been stated generally, and the expression "on failure of the prior" having been used by the Lord of the Yogis in a particular sense, a particular rule modifies a general one, and therefore what others have said is something, and the exposition in the *Mitāksharā* alone is more proper. Thus everything is in its right place. 25 30 35

Thus having shown the right of the paternal grandmother to succeed to the property after the brother's son as more proper, the Author 40

points out by a discussion the order after that, *Tatra cha pīrsantānā-  
bhāva iti* (p. 96. l. 22.) *Among these, moreover, on failure of the father's  
line &c.* (p. 255. l. 10). 'The father's line' is as far as the brother and  
his son. *Janmanāmajñānāvadhā weti* (p. 96. l. 26.) *or as far as the*  
5 *limits of knowledge as to birth and name extend &c.* (p. 256. l. 5.) i. e.  
it comes after the *Sapiṇḍas*. The meaning is that thereafter after seven  
generations as far as the birth and the name are known to that extent  
the term *Samānodaka* applies.

10 *Gotrajābhāve bandhavo dhanabhāja iti* (p. 97. l. 1.) *On failure*  
*of the Gotrajas the bandhus succeed to the estate &c.* (p. 256. l. 13.) i. e.  
of the paternal grandmother, the paternal grandfather, the paternal  
uncle and his sons; the paternal great-grandmother, the paternal great-  
grandfather, the paternal grandfather's brother and his sons; the  
15 mother of the paternal great-grandfather, the father of the paternal  
great-grandfather, the paternal great-grandfather's brother and his sons;  
the grandmother of the paternal great-grandfather, the grandfather of  
the paternal great-grandfather, paternal great-grandfather's uncle and  
his son; the great-grandmother of the paternal great-grandfather, the  
great-grandfather of the paternal great-grandfather, the paternal great-  
20 grandfather's great-grandfather's brother and his sons—and in the same  
way among the *Samānodakas* also in the absence of these. This is  
the meaning.

25 *Brāhmaṇārthasya tannāsa iti* (p. 97. l. 14.) *For the wealth of a*  
*Brāhmaṇa on his demise &c.* (p. 258. l. 15.) It has been generally  
pointed out that if there be no heir to the wealth of a *Brāhmaṇa*, then  
that should be given to a *Brāhmaṇa* only. (To a question) under what  
circumstances? (the answer) by implication, 'on his demise' i. e. of him  
the owner *Brāhmaṇa*, the demise occurring. This is the order (of  
words.) Or, *Tad*, may be taken as a separate word.

30 *Sarvābhavo hareṇṇpa iti* (p. 97. l. 17.) *on failure of all, the King*  
*may take.* (p. 258. l. 24.) 'on failure of all' i. e. in the absence of all  
including as far as the co-student.

### Yājñavalkya Verse 137.

35 *Naishṭhikasya dhanam tadapavādeneti* (p. 97. l. 23.) *The money*  
*of a professed student as an exception &c.* (p. 260. ll. 67.) i. e. as an  
exception to the succession of the mother and the rest. *Sachṣhya iti*  
(1. 24.) *a virtuous pupil &c.* (1. 8.) virtuousness is the characteristic  
of the pupil. Therefore, the preceptor, the spiritual brother and asso-

ciate in holiness also (when) virtuous, succeed to the property. So  
PAGE 75\* the Author says: *Durvṛttasyācāryāderapi itī* (p. 97.  
1. 25.). *Of one whose conduct is bad, even the preceptor*  
&c. (p. 260 ll. 10-11.)

With this very object the sage Yājñavalkya in the text "the  
preceptor, the virtuous pupil, the spiritual pupil, and associate in holiness"  
with a view to indicate connection, has enumerated the expression  
'a virtuous pupil' in the middle. Or by the expression 'a virtuous  
pupil' is not mentioned an absence of viciousness, but on the other  
hand is expressed one who is competent to take lessons regarding  
the knowledge of the Supreme Spirit.

It may be said that the preceptor and all others also who are  
badly behaved having been excluded without discrimination it would  
be improper to stress the unequal behaviour of the pupil alone, so the  
Author says: *Sachhiṣhyaḥ punarityādinaḥ bhāgānarhatwādityantena*  
(p. 97 l. 24-25). Beginning with *a virtuous pupil, however* &c. (p. 26.  
l. 7.) and ending with *is unworthy of inheritance* &c. (l. 10.) *Pratipanno*  
*bhrātā* (p. 97 l. 26.) *is engaged as a brotherly companion* &c. (p. 260.  
l. 14.) i. e. accepted as brother.

In the absence of the preceptor, the virtuous pupil, the spiritual  
brother and an associate in holiness, who will take the property of a  
life-long calibate, an ascetic and a hermit? So the Author says:  
*Eteṣhāmācāryādinaḥ bhāgānabhave itī* (p. 97 l. 27.) *In the absence of these*  
*viz: the preceptor and the rest* &c. (p. 260 l. 18.)

*Yogasambhārabhedāmscheti* (p. 98 l. 1) *requisites for his austerities*  
&c. (p. 261 l. 13) The meaning is that books treating of the *yoga* and  
such other things.

### Yājñavalkya Verse 138.

With a view to explain the origin of the word "re-united" the  
Author states the meaning of the word "re-united", *Vibhaktam dhanam-*  
*itī* (p. 98 l. 5) *effects which had been divided* &c. (p. 262 l. 1).

The Author expounds the original text, *ṛasya saṁśṛṣṭina ityā-*  
*dina* (l. 7) *saṁśṛṣṭirevāpaharet gṛhṇīyāt na patnyādityantena* (l. 9)  
Beginning with *of such a re-united* &c. (p. 262 l. 7) and ending with  
*the re-united partner alone shall take the inheritance and not the widow*  
*or any other heirs* (p. 262 ll. 11-12). From the remaining portion of  
the above sentence viz "and none other shall take the inheritance"  
taking out the word "shall take", the Author completes this sentence:

Apaharet gr̥h̥yāditi (p. 98 l. 9) shall take i. e. appropriate. By the word "of such" the Author completes the compound sentence stated before. Here the expression "of the deceased" is either the sense or deducible from the context. With a view to remove a conflict  
 5 with another text by its meaning the Author completes the import of the sentence : Vibhūgakālē avijñātagarbhāyāmīti ( p. 98 l. 8). *Where the pregnancy was unknown at the time of the distribution &c.* (p. 262 l. 10).

This is the meaning intended here : When three or four brothers  
 10 or others become re-united, then from among them if one brother die after depositing a foetus in his wife, and of the surviving re-united coparceners on account of their being many or for want of unanimity partition has become necessary—for there would be no partition where there is one, or if there be unanimity—at the time of such partition, by  
 15 reason of the conception not being manifest, if the foetus was not known, but a partition had been made and a son was born in course of time, then to him, his father's share should be given. In his absence, taking into account the re-united individuals and determining the share, the re-united parceners should take. Here the singular number used is  
 20 for the word "re-united" with the object of stating the law relating thereto. Otherwise, when there is only one individual there would be no partition.

The Author points out the meaning of the sentence which is obtainable in pursuance of the prior sentence : Atah sodarasya samsṛṣṭī-  
 25 neti ( p. 98. l. 13. ) *Therefore...of an uterine re-united &c.* (p.262. l.99.) Jātasya sūtasya ( p. 98. l. 14. ) *to a son born &c.* ( p. 262. l. 20. ) similarly as explained before viz. born afterwards of one whose conception had not been manifest.

It has been mentioned that the expression "of an uterine brother,  
 30 his uterine brother" is an exception to the clause "of a re-united, the re-united". The Author makes that clear in substance : Evan̥cha sodarāsodarasaṃsarga iti (p. 98. l. 14.) *Thus if there be uterine and non-uterine brothers together* ( p. 262. l. 22. )

35

### Yājñavalkya Verse 139.

Kasya dhaugrahaṇamīti vīvakṣhāyāmīti ( p. 98. l. 16. ) *To an inquiry who shall take the succession &c.* ( p. 262. l. 26. ) at the appearance i. e. when the knowledge had arisen, i. e. to say when there was a desire to know.

The first part of the second half of the original text is to be taken at the beginning of the sentence; so the Author says: *Anyodaryah sâpatno bhrâtetî* (p. 98. l. 20.) *a half-brother i. e. a brother born of a rival wife &c.* (p. 263. ll. 6-7.) Here it should be taken as following the word "to the re-united". Therefore the meaning is, the property of a re-united. 5

The Author points out the substance of the conclusion which was obtained affirmatively by the positive rule regarding the succession to the property of a re-united half-brother as also negatively by the rule which prohibits succession to an un-reunited half-brother: *Anenânwaya wyatirekâbhyâmitî* (p. 98 l. 21.) *Thus by the test of affirmative and negative reasoning &c.* (p. 263 l. 9). The expression "not re-united" has connection with both like the crow's eye. Therefore there would be another sentence ending with "a not re-united also shall take", so the Author says: *Asaṃśṛṣṭīpyetaduttareṇâpiti* (l. 11.) *The term not re-united.....also with what follows &c.* (p. 263 l. 11). The Author states the same sentence; *Ataschâsaṃśṛṣṭīyapiti* (p. 98 l. 22.) *and hence, even one who was not re-united &c.* (p. 263 l. 12). It is only in his capacity as re-united that a re-united (succeeds). This is what is deduced. 10 15 20

The Author connects the term 'a re-united' occurring in the latter part, as the remaining portion of the prior clause: *Kosâviti* (p. 98 l. 7) *Who is he &c.* (p. 263 l. 13). The Author states the meaning of the terms re-united mentioned before: *Saṃśṛṣṭa ekodarasamaṃśṛṣṭa iti* (p. 98 l. 23). *'One united' i. e. one united by the identity of the womb &c.* (p. 263 l. 14). i. e. enclosed in the womb of one mother. This is indicative of the father also by an extension. Under the text of the Śruti "The husband enters into the wife in the form of a foetus; thus the mother &c." the wife having also been stated to be a mother, the father, even though not re-united shall take the estate of a son, thus the son also un-reunited, of the father, or brother who is dead. This is the meaning in substance. By the use of the term 're-united', the Author brings out this very meaning: *Sodara iti yâvaditi* (p. 98 l. 24) *in other words, an uterine brother* (p. 263 l. 15). 25 30

He states the meaning in substance of the clause "One un-reunited may also take": *Anena sodarasyeti* (p. 98 l. 24). *By this..... of an uterine brother &c.* (p. 263. ll. 15-17). By the same method as stated above, the term "re-united" in the former clause goes by context 35



with the latter term "not the son of a different mother" so the Author says: *Samsr̥ṣṭiṭa ityuttareṇāpīti* (l. 24). *The term 'united' likewise .....with what follows &c.* (p. 263 l. 18).

5 The Author states the intended meaning of the term 'united' as a part of the sentence which follows, *Tatra cha samsr̥ṣṭiṭa iti* (l. 24). *And here the term 'united' &c.* (p. 263 l. 19).

10 With a view to supplement the term "not the son of a different mother" by adding 'only' (*eva*), the Author takes it up as a quotation word: *Nānyamātr̥ja iti* (l. 24) *not the son born of a different mother &c.* (p. 263 l. 23). Of the sentence formed by adding the term 'only' (*eva*) as a supplement to the clause "the united, not being the son of a different mother", the Author thus points out the method of exposition *Samsr̥ṣṭiṭyapyanyamātr̥ja iti* (l. 25). *Although re-united, one born of a different mother..... exclusively &c.* (p. 263 ll. 23-24).

15 The Author states the meaning in substance of the entire latter half viz. "Not re-united may even take &c". *Evanchāsamsr̥ṣṭiṭyapi cheti* (p. 95 l. 26). *Thus.....though not re-united &c.* (p. 263 l. 26). There the Author states the reason: *Dwayorapīti* (l. 27) *of both even &c.* (p. 264 l. 6). The meaning is, that the reason for the succession of a non-uterine brother is his being re-united, while of an uterine brother, his uterine relationship itself is the cause, and not reunion.

*Samsr̥ṣṭiṭvibhāgam prakramyati* (l. 29) *premising partition among re-united parceners* (p. 24 l. 8). The context should be understood as beginning with the expression "living together &c."

25 The Author explains the text of *Manu* "Of whom the eldest or the youngest &c." *Yeṣhām bhrātṛṇāmityādinā*: Beginning with *among the brothers &c.* (p. 264 l. 15). By reason of the use in the beginning and the end of the eldest and the youngest, by a parity of reasoning, the middlemost also is intended to be expressed, so the Author says

30 *Madhyamo weti* (p. 99 l. 1.) *or the middle-most &c.* (p. 264 l. 16).

The Author points out the causes for a deprivation of a share *Āśramāntaraparigraheṇeti* (p. 99 l. 2) *on account of his entrance into another order &c.* (p. 264 ll. 19-20). The Author states the meaning in substance of this very text of *Manu*: *Ataḥ pṛthaguddharaṇīya iti* (p. 99 l. 3.) *But shall be set apart &c.* (l. 21).

35 The Author introduces the text of *Manu* "The uterine brothers shall divide &c" with a view to explain it: *Tasyodhṛtasyeti* (l. 3) *Of the share so set apart &c.* (p. 264 l. 23). From the use of the term

're-united, in the clause "and those brothers also who had become re-united", it appears that here the uterine brothers are contemplated as un-reunited. And hence the Author expounds the first half by context with the term 'un-reunited' got at from the sense: *Ta-muddhṛta-bhāgamī* (p. 99 l. 4). *That share so set apart* (p. 264 l. 24). *Sanā-bhāyo bhagīnyāścheti* (p. 99 l. 6). *And also the uterine sisters &c.* (p. 264 l. 30). i. e. the sisters born from the same womb.

### Yājñavalkya Verses 140, 141, & 142.

*Putrapatnyādīsaṃśṛṣṭiānāmīti* (p. 99 l. 8.) *respecting the son, the widow, and other heirs...the re-united parcenters &c.* (p. 264 ll. 35-36). By the word son is included, by implication, the son's son also; by the term *Ādī* 'and others' the daughter and the rest. The compound is to be dissolved as the sons, and the group beginning with the wife and others as well as the re-united. *Vibhakteṣhu suto jāto sawarṇā-yām vibhāgabhāgītyasya sāmānyanyāyatwādīti* (p. 99 l. 25). *By a parity of reasoning with the rule (in the text) "when the sons have been separated, a son who is afterwards born of a woman equal in class, shares the distribution"* (p. 267 ll. 19-21). A son born after partition means also the birth of a son to oneself, thus the difference between the attribute and those possessing it is only as to the origin, and there is thus no other difference and thus the difference being only as regards the subject, there is parity of reasoning. The meaning is, that there being thus the difference only as to the subject, there is the parity of reasoning.

*Uktadoṣhaduṣṭhānāmīti* (p. 99 l. 26). *Disqualified for...defects specified &c.* (p. 268 l. 2) i. e. by the defects of impotency and the like.

### Yājñavalkya Verse 143.

*Agnāvadhikṛtyeti* (p. 100 l. 14.) *before the nuptial fire &c.* (p. 271 l. 4.) i. e. near the fire. *Adhivedananimittamīti* (l. 15) *on account of a supercession &c.* (p. 271 l. 6). Supercession means while the lawful wife is existing performing another marriage merely for pleasure.

Some describe the word *śṛidhana* as not having a literal import just as is the case with *Aśvakarna*<sup>1</sup> and restrict it to the six kinds

1 From the point of view of their import words fall under three classes, *वर्तमान* literal or etymological, and *योगज* a combination of the two. The word *वर्तमान* if taken in the sense as some writers believe it to be current would restrict its scope from a literal interpretation of that term, which would extend it to all kinds of properties in whatever way obtained by a woman. The illustration of *अश्वकर्ण* given above would restrict it to the supposed current meaning *अश्वकर्ण* literally means the of a horse. But in current usage it is used to indicate a tree and objects other than a horse's ear.

enumerated by Manu in the text "are denominated the six-fold property of a woman". That is not correct. Because thereby there would be a

PAGE 77\* conflict with other texts, a conflict with the usage of the good, and a custom (to that effect) not having gained

- 5 ground, the literal meaning would preponderate over the one in vogue, the derivative sense alone is proper ; with this object in view the Author says : *Stridhanaśābdascha yaugika iti* ( p. 100 l. 17 ). *The word stridhana conforms in its import with its etymology &c.* (p. 274 ll. 12-13).

10

### Yājñavalkya Verse 145.

The Author expounds the clause in the original text viz. "will go to her daughters, if she leave progeny" &c. *Sarveṣhwapi vivāheṣhu iti* (p. 101 l. 11.) *Indeed in all forms of marriage &c.* (p. 275 l. 11).  
15 *Duhitṛduhitara iti* (l. 12) *daughter's daughters &c.* (p. 275 l. 14) i. e. the daughters of the daughter. *Sodaryāṇāmūrdhwaṃ māturiti* (p. 101 l. 18.) *to the uterine brothers after the mother* (p. 276 l. 15) i. e. in the absence of the mother, the uterine brothers shall take.

- 20 When the daughters are many, and these are not living, and their daughter's also, one has one, another two, and another three, and there is unevenness, then how will the shares of the daughters' daughters be determined in the property of the maternal grandmother ? Anticipating this question, the Author reminds of the same rule as has been stated about the son's sons in regard to the property of the paternal grand-  
25 father : *Tāsām bhinnamātrkāṇām iti* ( p. 101 l. 19 ) *of these... by different mothers &c.* (p. 277 l. 6). *Pratimātrto wā swawargeṇa* ( l. 20 ). *Or according to the mothers, let the special shares...in each class* (p. 277 ll. 6-7). The meaning of this : In the class of daughter's daughters, according to the mother of each i. e. for each mother separately, the  
30 particular share for her mother shall be made, and not by regard individually (to each).

*Māturduhitarobhāva iti* (l. 24)...*mother's ; or on failure of daughters &c.* (p. 277 l. 16). The meaning of this : After the mother, her property, her daughter should take. Failing these, among her issue i. e. the daughter's' issue, first it goes to the daughters of daughters.

1 This is an important interpretation in the matter of the succession to a woman's estate. This point is further made clear by *Smṛtichandrikā*, See p. 286, ll. 1-3.

"Failing these her issue"—by this statement, it becomes of the daughters' of daughters who are the female issue, otherwise the statement of the term 'issue' would be meaningless.

It may be said the word (*īd*) 'it' relates to the nearest word and therefore in the order of words as stated the word daughters alone being nearest, the daughter's issue i. e. progeny is alone deduced; not the daughter's son who are the children of the daughters; so the Author says: *Tachhabdeneti* (p. 101 l. 24). *For the pronoun it &c.* (p. 277 l. 17). This is here the idea: There being the nearness of the word as also of the meaning, it is proper that it should refer to the daughters actually. 5 10

The Author expounds the text of Manu "When the mother is dead &c": *Mātrkaṃ ṛktham itī* (p. 101 l. 17). *The maternal estate &c.* (p. 278 l. 7).

It may be said, indeed, let the order (of words) be as referring jointly viz. that uterine brothers and uterine sisters together shall take, why should the order be separated? Anticipating this the Author refutes it: *Na punaḥ sahodarā itī* (p. 101 l. 28) *and not that uterine brothers &c.* (p. 278 l. 19). 15

The Author states a reason here: *Itaretaryogasyeti* (l. 19) *abridged form of the conjunct compound &c.* (l. 10) This is the import:— The conjunctive 'and' (*cha*)<sup>2</sup> is used in four senses: Community<sup>3</sup> (of reference), collateralness<sup>4</sup> (of reference), mutual<sup>5</sup> conjunction, and aggregation.<sup>6</sup> The *Dvandva*<sup>2</sup> compound is used to express a relation (of 20

1 Here there is a mistake in the print. At p. 77. l. 13. read दोहिणी for दोहिणी.

2 चार्थे द्वंद्वः The full text of the *Siddhānta Kaumudī* on this will be of much use in following the passage and the notes. It runs thus,—अनेकं वदन्त चार्थे वर्तमानं वा समस्यन्ते स द्वंद्वः समुच्चयः वाच्येतेतरयोगसमाहारोच्चार्यः । &c.

3 समुच्चयः—which has been thus explained! परस्परविरुद्धावयवस्य यदास्मिन्नवयवः समुच्चयः । When two or more independent words not related with each other, are grammatically in the same case, their conjunction will be समुच्चय, e. g. ईश्वरं गुरुं च वदन्तः Here there can be no compounding as there is no *Sāmarthyā* न समासोऽस्मादर्थ्याद् Two things here have been connected by one (विवा) verb.

4 अन्वयाच्च—अन्वयेतेतरयोगविशेषाच्चाप्य—when one action is used as collateral to a principal action, it gives rise to the union called अन्वयाच्च e. g. मिश्रामृतं वा पानम्. Here there is no compounding, owing to want of *sāmarthyā* i. e. here want of *Ekarthibhāva*.

5 इतरेतरयोग—मिश्रितानामवयव e g यवसद्विषलाक्षा

6 समाहारः—समुच्चयः In these two latter kinds, as there is mutual combination there is compounding The distinction between the two has been thus stated—इतरेतरयोगे साहित्य विशेषण द्वयं तु विशेष्यः समाहारे तु साहित्यं प्रधानं द्वयं विशेषणम् । In the इतरेतर each member is considered separately, while in the समाहार all are exclusively considered as in समाहारमात्रम् See note 6 on. 278 of the *Mitāksharā*.

several words) expressible by 'and'. There, the senses of community and collateralness being incompetent, a *Dvandva* compound does not occur. The compound occurs only in the cases of mutual conjunction and aggregation. In the case where it is taken as expressing mutual conjunction, in the text of Manu<sup>1</sup> a division of the brother and the sister is inferable by a pooling of the effects and then a division. The determination of the mutual conjunction is either by making a *dvandva* compound or through the uni-residual compound as is instanced in *Dhava-Khadira-Palāśāḥ*.<sup>2</sup> Similarly if the compound word 'brothers and sisters' be taken as a *uni-residual*<sup>3</sup> compound of similar words, it would be (understood) as (in the cases of) the trees,<sup>4</sup> or as (in the case of) the issue<sup>5</sup> having a similar import. Or it be taken as a *uni-residual* compound of dissimilar words under the rule<sup>6</sup> of grammar "The words *bhrāta* and *putra* only are retained respectively when used with the words *swasr* and *duhitṛ* in a uni-residual compound of (the words) *bhrātr* and *swasr* being made, only the term 'two brothers' (remains), and on a uni-residual compound being made of (the words) *putra* and *duhitṛ*, only the term 'two sons' (remains). That determination is made when either of these occur. But that is not so. Therefore it is not the case of a mutually conjunctive compound.

Moreover, the term (*cha*) 'also' may also be explained in another way, and so there is no inference that the brother and sister take by a division after pooling together, so the Author says : Vibhāgakartṛtvānwayenāpīti (p. 101 l. 29). *even.....with reference to the person making the partition &c.* (p. 278 l. 13). Or even without a uni-residual *dwandva* compound, as a result of the (use of the) word *cha*, let there also be a mutual conjunction" so the Author says : Vibhāgakartṛtvānwanyenāpīti. Or, the Author gives an illustration here : Yathā Devadatta iti (p. 101 l. 30). *As.....Devadatta<sup>7</sup> &c.* (p. 278 l. 14).

1 viz. IX. 192. Here one entire line has been omitted to be printed after the words मनुवचने viz. ब्राह्मणिन्योः सम्भूय विभागप्रतीतिः । इतरेतरयोगप्रतीतिश्च द्वन्द्वेन वृत्तेर्नैव शेषद्वारा वा । यथा पञ्चसद्विपलासा इति तथा ब्राह्मणिन्यन्व.

2 Names of trees stated as illustration of the इतरेतर compound. वृक्ष is the *Mimosa*, and खदिर the *Grislea* or *Acacia Catechu*, and the पलाश is the *Butea Fendosa*.

3 सजातीयैकशेषः here e. g. indicative of अपरत्व.

4 वृक्षाः ; there is a mistake in the print ; for वृक्ष read वृक्षाः

5 For before सम्भवाद्यनायेति in l. 22, p. 77. read अपरत्वनायेति ।

6 This is stated in Pāpini at I. 2. 68. Before ब्राह्मण्यो in l. 22. read यद्वा विजातीयैकशेषे.

7 This example is with reference to the person making a partition विभागकर्तृ.

**Striyāstu yadbhavedwītam iti** (p. 102 l. 1). *Whatever property of a woman may exist &c.* (p. 279 l. 4). Here by the use of the expression 'of a woman', 'by the father' and also 'the daughter of a Brāhmani co-wife' what has already been stated has been accepted. **Anapatya-vaiṣyādhanam kṣhatrīyā kanyā gṛhṇātīti** (p. 102 l. 3). *The daughter of a Kṣhatrīyā co-wife takes the goods of a childless Vaiṣyā co-wife* (p. 273 ll. 8-9). This rule should be observed in the case of the property of a Śudrā co-wife also. 5

**Rkthabhāja ṛṇaṃ pratikuryuriti** (p. 102 l. 4). *They who share the inheritance must pay the debt &c.* (p. 279 l. 11.). Having stated that those who discharge the debt shall take the inheritance, taking the two texts into consideration, the son's son being of the category, in the absence of the son, the son's son shall take the property of the paternal grand-mother. This is the meaning. 10

### Yājñavalkya Verse 146.

**Drawyānubandhādyanusāreṇeti** (p. 102 l. 8). *By regard to the amount of the property or the magnitude of the offence &c.* (p. 280 l. 8). **Anubandha**—Offence i. e. the cause of the mischief. For according to the lexicon of Amara<sup>2</sup>. "That which causes the mischief is an offence." 15

**Ubhayorātmanah Kanyādātuscheti** (p. 100 l. 15) *of both i. e. of himself and of the person who offered the bride &c.* (p. 80 ll. 25-26). This is the import : The amount of money spent by those who had prepared themselves for the marriage viz. the person offering the bride and the one accepting her, such as her father and the like others, should be taken from the bride's money and the balance should be given to the bridegroom. 25

**Tadabhāve mātustadabhāve pīturiti** (p. 102 l. 18). On failure of them, it shall belong to the mother ; and in her absence, to the father. The meaning is that in the absence of the uterine brothers, it becomes (the property) of the mother, and in her absence, of the father. 30

### Yājñavalkya Verse 148.

A second marriage itself is the cause for the payment of money to the first lawfully married wife, so the Author says : **Adhivedana-nimittam dhanamīti** (p. 103 l. 4) *on account of supercession. An amount &c.* (p. 282 ll. 19-20). 35

1 I. 3 18. An anubandha is a connection. Here it means the cause whether near or remote which causes the rupture.

2 III. 3. 98.

How much is that? Anticipating such an inquiry, the Author says: *Samam yāvadadhivedanārthamiti* (p. 103 l. 4.) *equal to what.....on the second marriage &c.* (p. 282. ll. 20-21.)

Here the word 'half' (*ardham*) in the original text is not in the neuter gender, so that it would be expressive of an equal share, but it is in the masculine gender. And therefore it is expressive of a portion. With this object in view, the author says, *Ardhaśabdaschâtreti* (p. 103 l. 6). *Here, however, the word 'half' &c.* (p. 283 l. 3,) vide the lexicon of *Amara*<sup>1</sup> (according to which) "when used in the masculine its form is *Ardhaḥ* denoting a portion; in the neuter, it is *Ardham* meaning an equal (half). &c."

End of the Chapter on the Distribution of Inheritance.

## Chapter IX

### BOUNDARY DISPUTES

*Janapadasāmeti* (p. 103. l. 26) *Boundary of a country &c.* (p. 285. l. 18.). *Janapada* means a country. *Sā cha yathāsambhavamiti* (p. 103 l. 27). *This ... according to circumstances &c.* (p. 283. l. 20). Not necessarily is a boundary only that which is accompanied by the five characteristics about to be mentioned, but somewhere it has one, somewhere two, somewhere many, according as they are likely to be available at a particular place—without transgressing these. *Dhwajini vṛkṣhādilakṣhītetī* (p. 103. l. 29). *One having a flag-mark i. e. marked by trees &c.* *Matsyini salilawatī* (l. 29). *One marked by the fish i. e. one with water in it &c.* (p. 285. l. 26). *Naidhānī nikhātātushāṅgārādīmatī cha* (p. 104. l. 1). *Known by a deposit i. e. one containing the fire of the husk deposited after digging &c.* (p. 285. l. 28). For says *Vyāsa*.

"Where on the boundary of two villages tall trees are standing rising high and looking flag-like, that (boundary) is known as *Dhwajini*, or boundary with a flag-mark.

"Where there is a river flowing at random with plenty of water containing fish and tortoise and having a perpetual stream, that boundary is considered as *matsyini*, or one marked by the fish.

"That boundary which is to be marked by fish, husk, skulls, jars, and receptacles is known as the *Naidhānī* or boundary known by deposits."

**Arthipratyarthiparasparasampratipattinirmīṭeti** (p. 104. l. 2.) *created by the mutual agreement of the plaintiff and the defendant &c.* (p. 285 l. 36.) By reason of the truthfulness of the plaintiff and the defendant, and the utmost mutual confidence, in accordance with the mental impression of each, determined by a mere oral declaration viz. 'this is my land' and 'this is my land'. Here the position of a plaintiff or a defendant is on account of neighbourhood,<sup>1</sup> being in that position and not on account of being oppressed by hatred.

**Jñātṛcchinbhābhāva iti** (p. 4 l. 13.) *in the absence of signs of recognition &c.* (p. 285 l. 33) *Jñātāro* 'persons recognizing' i. e. the witnesses, neighbours and the like. 'Signs' such as trees and the like. Men recognizing as well as 'signs'; in the absence of these. This is the meaning.

While commenting on the text of *Kātyāyana* and pointing out the six varieties of disputes in suits relating to land, there the Author describes the first variety **mamātra panchanivartanāyā iti** (p. 104 l. 6) *my land was five nivartanas &c.* (p. 286. l. 7). The Author mentions the second, **Panchanivartaneti** (p. 7) *five nivartanas &c.* (p. 286 l. 10) The Author states the third and the fourth: **Panchanivartano mamānsa iti** (ll. 7-8.) *My share measured five nivartanas &c.* (l. 12). Here with a view to test the intelligence of the Teacher on an assertion being made by 'Here my share is five nivartanas' without difficulty setting up the third variety by saying that it is not that your share is five nivartanas, the next variety itself has been brought out. Hence the combined conclusion viz. 'dispute as to the existence or absolute non-existence.'

PAGE 79 \* The Author mentions the fifth and the sixth varieties  
**Madiyā bhūḥ prāṅṇi** (p. 104. l. 8.) *My land ..... prior &c.* (p. 286. ll. 15-16). Whether this is the boundary or this; or my share is five nivartanas, is one variety. This is the boundary, or this is the boundary, is the fifth variety; this is the limit, or this, is the sixth. Intending this very thing the Author says: **Iyaṁ madyādeyam weti simāviwāda iti** (p. 104. ll. 9-10). *When there is a dispute whether this is the boundary or that is the limit, it is a dispute regarding boundary* (p. 280. ll. 19-20).

The distinction between the boundary and the limit will be pointed out in<sup>2</sup> (the text) 'for breaking up the boundary' &c. and in a dispute as to the 'existence or non-existence', when both sides are admitted, the limit and boundary are regarded as one, and the suit proceeds. If re-

<sup>1</sup> *व्यतिरेक्यत्वेन* is a better reading than *व्यतिरेक्यत्वेन*.

<sup>2</sup> Y2jn. II. 155.



garded here as separate, they would be one before. Or, excess, deficiency, existence, non-existence, possession without any prior occupation, and a boundary, these six causes, sometimes separately, sometimes jointly ; thus the Author concludes what had been incidentally indicated before : *Ṣaṭ prakāra eveti* (p. 104. l. 10) *of six varieties &c.* (p. 286 l. 21). *Śrutyaarthābhīyāmiti* (p. 104 l. 11.) *determined either under an express or implied text* (p. 286 ll. 22-23.). The distinction is that where there is actually a dispute as to the limit, then express, and elsewhere implied.

*Tatsaṃsaktādyupalakṣhaṇārthamityuktam* (p. 104. l. 104). *indicative by implication of those contiguous to them &c.* (p. 286 ll. 32-33). Here the Author mentions those included in the term 'and others': *Uktanā Kātyāyanaḥ* *Saṃsaktakāstu* (p. 104. l. 15.) *Kātyāyana has also said, those who are closely contiguous &c.* (p. 286 ll. 33-34.) The meaning of this : The neighbours on the boundary are known as closely contiguous. So, those placed beyond these being contiguous to these, are styled *Uttarāḥ* ; hence also as this is their designation, it is not to be taken as a pronoun. Similarly, those situated further on being contiguous to those immediately contiguous are described as *Padmākārā*. The *Sāmantas* and the two others also are indicated by two names. This is the meaning.

*Tatkāryaṃ tadguṇāṃ vitairiti* (p. 104 l. 18). *Anything being brought about—being endowed with the qualities &c.* (p. 286 l. 40 and p. 287 l. 1.). "Anything" i. e. in the form of deciding disputes about boundaries &c. or the like. 'Endowed with the qualities' i. e. qualities such as expert knowledge regarding decisions about boundaries &c. *Upaśravaṇasambhogeti* (p. 104 l. 19) *by tradition any act of peaceable possession* (p. 287 l. 7.). Clear statements by the assessors or traditions to the effect 'Here' is wealth', and evidences in the form of continuous peaceable possession ; special episodes relating to these ; marked by this. This is the meaning.

*Vyādhāṇ śākunikāniti* (p. 104 l. 22) *hunters, fowlers &c.* (p. 287 l. 13) *Vyādhāṇ* i. e. Hunters ; 'Fowlers'—i. e. those earning a livelihood by killing birds. 'Fishermen'—those who earn a subsistence by digging a tank &c. 'Root-diggers'—Those who find out a living by digging up the roots of trees &c. 'Snake-catchers', i. e. those who catch snakes ; jugglers. 'Gleaners' i. e. who subsist on gleanings of corn. 'Foresters' i. e. roaming about the woods for fruit, flowers &c.

*Gulmāṇ veṇūṣcha vividhāniti* (p. 104. l. 27). *Shrubs and bamboos of different kinds &c.* (p. 287. l. 24.) 'Shrubs' i. e. stemless

clumps of trees. Vide the Amara<sup>1</sup> "Stemless are clumps of trees or grass". Grass or a creeper<sup>2</sup>. Kupyagulmāścheti<sup>3</sup> (l. 28) *thickets of the Kupyaka* i. e. thickets relating to the base metals. A base metal is itself one relating to it. Kupyā means any base metal such as copper &c. excepting gold and silver. According to Amara<sup>4</sup> "'Hema' and 'rūpya' are used for gold and silver whether refined or gross; Kupyā is that which is other than these two." By reason of removing the dross of the Kupyāka, and by constant contact with it, and rubbing against it, it has been described as relating to it. And for this reason they have been indicated separately from clumps which are more useful. That is the distinction. Tadāgānyudapānāniti (p. 104 l. 29) *tanks, drinking reservoirs* &c. (p. 287 l. 27.). 'Drinking reservoirs' i. e. wells vide Amara<sup>5</sup> 'a well, a drinking reservoir used in the (neuter or) masculine gender also'. Wāpis or wells, i. e. wells built up in stones &c. vide Amara<sup>6</sup> 'Wāpi' is the same as *Dirghikā*." 'Fountains' such as springs &c.

### Yājñavalkya Verse 152.

Sāmantā wā samagrāmā iti (p. 105. l. 27). *Men of the neighbouring villages or of the same village* &c. (p. 288. l. 12). "Of the same village" is adjectival of the 'Sāmantas' and not a separate name such as the contiguous neighbours of the village &c. The meaning of 'or' has been made clear in the book itself.

Swārthasiddhau pradushteshūti (p. 105 l. 14). *suspected to be corrupt on account of personal interests* &c. (p. 289. ll. 6-5.) i. e. when the 'Sāmantas' are under a cloud.

By reason of the plural number used in 'Nayeyuh'—*they shall determine*—one or two cannot determine a boundary, so the Author says Nayeyuriti bahuwachanamiti (p. 105 l. 22.) *The plural number in the expression 'they should settle' &c*

With a view to explain the text of Nārada viz. "has been carried off by a (down-flowing) stream and thus the boundary marks have been uprooted or destroyed" the Author states the compound of this expression; Nīlāgāyā nadyā iti (p. 105. l. 28.) *a down-flowing river* &c. (p. 290 l. 11.)

1 II. 4. 9.

2 जडव is the upper part of a leg It is used here as a creeper, perhaps account of its derivation. जडवने वृद्धिं दधति (see *Rāmāśram* on Amara;

3 वृज्युलमाश is the reading in the Mitāksharā. Balambhatti has the same read as here.

4 II. 9. 91.

5 I 10 26

6 I 10 28

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In this text, three ways have been stated. The

Author analyses one of these viz. that indicated by the clause 'according to the inference to be drawn from the spot' and points out its characteristics : *Tatra tatpradeśānumānāditi* (p. 105. l. 30.)

- 5 *There according to the inference to be drawn on the spot. &c.* (p. 290 l. 14.) The Author analyses and expounds the nature of the way indicated by the clause 'according to measurements' *Grāmādārabhyeti* (l. 30) *Commencing from the village &c.* (p. 290. l. 17.). The Author explains the clause 'according to the traces of possession' : *Pratyarthīsamakṣham-*
- 10 *iti* (l. 31.) *with the knowledge of the opponent &c.* (p. 290 l. 20).

- Bṛhaspatinā Chātra viśeṣho darśita iti* (p. 106. l. 1) *a special rule has, moreover, been laid down by Bṛhaspati in this connection* (p. 290. l. 20). 'In this connection' i. e. in regard to witnesses, and *Sāmantas* and others in their most natural condition ; Or, in connection with the
- 15 *determination of the boundary. In the expression 'those who know, shall be proper witnesses' the use of the word 'witnesses' is indicative, by an extension, of the Sāmantas &c.*

- Grāmeyakakulānāntviti* (p. 106. l. 3.) *of the Kulas and of the Villagers &c.* (p. 290 l. 29.). The people of a village are the villagers.
- 20 *The meaning is that in the presence of these, and of the Kulas as already' defined in the expression 'pūga, śreni and kulas' as also of the plaintiff and the defendant. Or the assemblages of the people of the village, i. e. the Kulas.*

### Yājñavalkya Verse 153. (1)

- It may be asked, the statement 'In case of a falsehood, they should severally be punished' being general, how can it have a reference to the *Sāmantas* only, so the Author says : *Sāmantaviṣhayatā cheti* (p. 100. l. 16). *refers to the Sāmantas* (p. 291. ll. 27-28.). The meaning is that
- 30 *as other punishments have been laid down in other Smṛtis regarding people other than the Sāmantas, it is proper that the punishment stated by the Lord of the Yogis is in regard to the Sāmantas.*

*Jaghanyāsta iti* (p. 106. l. 21.) *these are sinners &c.* (p. 292. l. 107.) 'sinners' i. e. offenders.

- 35 The punishment indicated in the expression that this rule of punishment has a reference to (statements made in) ignorance, is the one stated by the Lord of the Yogis, Manu, Nārada and others and

beginning with the clause 'In the case of a falsehood, they should be severally punished' and that rule. This is the meaning.

The Author states the reason for that : Bahūnāntu gṛhītānāmītyādīnā (p. 106. l. 26.) beginning with *If of those many assembled together &c.* (p. 292. l. 25.). Here however by the expression 'either through fear or only avarice' its reference to design is indistinct. 5

### Yājñavalkya Verse 153. (2)

Yadā tasyām bhūmāwiti (p. 107. l. 5.) *when in the land &c.* (p. 293. l. 16). The meaning is that when in the land under dispute there is a possibility of a greater use for one of the villages, then as much of the land as may be of use, the whole of such land should be given. 10

Simāyāmaviṣṭahyâyāmīti (p. 107. l. 7.). *If the boundary cannot be ascertained &c.* (p. 193. l. 19). The meaning of this: In the absence of signs, witnesses, and the like means when it is impossible to demarcate the boundaries, the king knowing the law himself, with an impartial mind, should assign i. e. order out as much portion of the land to a village for which it is likely to be of greater use, for the reason that it is likely to be of greater use. 15

Under the rule that "An extension always contemplates more." where the contemplation is wider' there on account of a cognition of non-resemblance with the subject stated before by reason of the things existing and non-existing of a like nature a doubt arises as to the existence or non-existence of things unlike and it is directed that here also (it should apply) as before, that is called an *Atideśa* also. As for instance having ordained the sacrifice to the manes with balls of rice for one who has maintained the consecrated fire, a direction that similarly also for one who has not maintained a consecrated fire is an *Atideśa*. 20 25

And it may be said that in the present context, that rule which has been stated in the text "In a dispute about the boundary of a field &c." being extremely similar to gardens &c. there is no necessity of any 'expansion', and so also the text which has been next stated regarding a garden, a warehouse &c. is unnecessary. Anticipating this, the Author says, so be it, still with the object of showing to the pupil that texts exist which lay down a rule, and with a view to further confirm 30 35

1 This is characteristic of an *Atideśa*, an extension. Jaimini's *Mīmāṃsā* devotes practically the latter half to topics admitted by an *Atideśa*. Books VII and VIII give exhaustive rules on particular propositions.

the rule stated before, the Author incorporates these by an express text for other topics although they do not form a separate subject. *Asatyāmapyasadbhāvaśankāyamiti* (p. 107. l. 9.) *Even though there is no room for doubting that it is not so &c.* (p. 293. l. 23,) That which has it i. e. similar form, is one having it; an absence of one having it is one not having it; a doubt regarding it; even when that did not exist. The compound is to be thus applied.

### Yājñavalkya Verse 154.

10 Having said that *Āyatana* 'a warehouse' means—*a nivāsa*, a house, the author exhibits the same by a further expansion. *Palālakūṭādyarthamiti* (p. 107. l. 12.) *for storing husk or straw &c.* (p. 294. l. 3.)

### Yājñavalkya Verse 155.

15 *Kṣhetraṃ vā bhīṣhayā haranniti* (p. 107. l. 25.) *by intimidation usurps a field &c.* (p. 295. l. 1.) 'Intimidation' means fear i. e. causing (fear) to another; also usurping by intimidation. This is the meaning.

### Yājñavalkya Verse 158.

20 *Idānim tasyaivānuprasaktānuprasaktyeti* (p. 108. l. 18.) *now... a close bearing in the same context &c.* (p. 296. ll. 59–30.) 'In the same' i. e. of the owner of the field. Related to the owner is the field; a consideration regarding that i. e. the field. Similarly also a close bearing may also be seen elsewhere. *Tam pradāpyākṣṛṣṭasadamiti* —having caused the same uncultivated and unharvested. The order of word is, that which was not cultivated and sown, caused to be restored. The Author expounds the expression not cultivated and harvested: *Tasyākṣṛṣṭasya phalam iti*—the produce of that which was unploughed.

End of the Chapter on Boundary Disputes.

30

## Chapter X.

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### DISPUTES BETWEEN OWNERS OF CATTLE AND THEIR HERDSMEN.

### Yājñavalkya Verse 159.

35 *Jāñapūrṇe tu pañasyu pāḍau dwau gāmīti* (p. 109. l. 5.) *How... ever by design—two quarters of a pana for a cow &c.* (p. 298. ll. 7–9.), For a cow, two quarters i. e. half of a *pana*, is the fine. For a buffalo, double i. e. an entire *pana* is the fine. For a goat, a sheep, and calves,

however, a fourth part of a *pana* is the fine. This is the meaning. From the excess in the punishment itself it appears that these are intended for acts done with knowledge.

### Yājñavalkya Verse 160. (1)

Yathoktāddwiguṇo daṇḍo veditawya iti (p. 109. l. 12.) *a fine double that mentioned above should be understood* &c. (p. 298. ll. 22-23.) i. e. when, however, without the knowledge (of the owner), a fine double that mentioned in the text "A female buffalo—eight *māṣas*" &c. If however, with the knowledge (of the one) then a fine double of that mentioned in "two quarters of a *pana* for a cow &c." This is the distinction to be made. Yathoktāchchaturguṇa iti (p. 119. l. 13.) *Four times that mentioned above* &c. (p. 298. l. 24.) Here also, the distinction is to be observed even as before.

### Yājñavalkya Verse 160. (2)

Mahīṣī yatra yādṛśeneti (p. 109. l. 18.) *a female buffalo—in those places and by a similar penalty* &c. The meaning is that in a place viz. a particular field, the kind i. e. the extent of penalty has been stated by that kind and extent of the punishment should an ass be punished. A camel also similarly is to be punished in case of an offence by it. But there is no special penalty in cases of either.

The Author mentions here the reason. Sasyoparodhakatwa iti (p. 109. l. 19.) *for obstructing the crop* &c. (p. 299. l. 14.)

### Yājñavalkya Verse 161.

From the text 'the herdsman shall be chastised' it being evident that he would have no pecuniary punishment, the Author mentions an exception: Gopasya cha tāḍanamiti (p. 109. l. 27.) *the chastising of the herdsman* &c. (p. 299. l. 32.). 'Keeper' i. e. the keeper of the cow, i. e. by his own fault. Or it may be explained thus: keeping is a keeper; the fault in that.

The Author expounds the portion "But the owner of the cattle incurs the fine already mentioned (before)": Gomī punriti (p. 109. l. 30.) *but the herdsman* &c. (p. 299. l. 31.) 'A herdsman' i. e. an owner of cows. 'One who has cows is a cowherd' vide *Amara*.<sup>1</sup>

Gobhīstu bhakṣhitam sasyamiti (p. 110. l. 2.) *crop consumed by cattle* &c. (p. 300. l. 16.) The meaning of this: He who demands back a

crop consumed by the cows, should be paid the value of corn produced in the field and as assessed by the *Sāmantas*. 'Chaff' (*Palāla*) i. e. the residue after consumption, such as grass, chaff should be given to the owner of the cattle.

- 5 By the general rule stated in the text "should be given to the man who claims back", a particular rule is anticipated. The Author (therefore) states a particular rule although it is apparently established from the context : *Dhānyaṃ vai Karṣhakasya tu iti* (p. 110. l. 3.) and *the corn to the cultivator &c.* (p. 300. l. 19.) The meaning is that it  
10 should be paid to the same owner of the field.

### Yājñavalkya Verse 162.

- Grāmavivitasamipavartini* (l. 6.) *situated in the neighbourhood of the village and pasture* (p. 300. l. 27.). 'Situated in the neighbourhood of the village', 'situated in the neighbourhood of the pasture' thus it is  
15 connected with each. Or, situated in the neighbourhood of the pasture, which is in connection with the village. That portion of land outside the village which is intended for the cows &c. to stand is known by the term *vivita*-*'pasture-land'*-or it may be expounded as 'in the  
20 neighbourhood' of such. (Here the expression) 'by the cattle' is used extensively. *Etachchānāvṛtakṣhetraviṣhayamiti* (l. 10.) *This rule moreover is with reference to an open field &c.* (p. 301. l. 6.) i. e. relating to a field without an enclosure.

- Vṛtincha tatra kurvīte* (l. 5.) *shall make there a hedge &c.*,  
25 (p. 301. l. 13.) The meaning of this: There i. e. outside the field and around it, should make an enclosure like a rampart where the camel could not look through. There such holes through which dogs &c. could insert their jaws should be blocked. 'Should ward off a hole as  
30 may exist' is also a reading. Thus, an enclosure should be so constructed that it should be without any holes as may admit the jaws of dogs &c. or it should be very tall. Thus varieties have been stated in the matter of making an enclosure.

### Yājñavalkya Verse 163.

- Adaṇḍyāṇ Kāṇakūtāṇ cheti* (l. 22.) *so are not punishable beasts with one eye, or an ox with<sup>1</sup> a broken horn* (l. 8.) '*Kāṇaḥ*'  
35 PAGE 67. \* i. e. defective in one eye. '*Kūtaḥ*' i. e. without a foot; i. e. lame : *Saśvatkṛtalakṣhaṇāḥ* (l. 22.) *which have been branded once*

1 काण्डूः. There is also another reading काण्डूजो.

(1. 9.) i. e. which on account of doing damage to the crop have been punished often by branding or by a pecuniary punishment.

### Yājñavalkya Verse 164.

*Nashṭam jagdhan cha Kṛmibhīrti* (p. 111. 1. 5.) *which has been lost, or destroyed by worms etc* (p. 303. 1. 4.). The meaning of this: Owing to want of supervision by the man entrusted with the task of guarding (the cows) which is the duty of a cow-herd, if any cattle has *vanished* i. e. gone beyond the range of vision, or has been devoured by worms, or killed by dogs and the like; or has died on account of falling into an 'uneven place' i. e. a pit or the like, the herdsman himself must pay to the owner. 5 10

*Prasahya choralapaṣṭāṇna dāpya iti* (p. 111. 1. 6.) *He shall not be made to pay for those which have been forcibly taken away by robbers* (p. 303. 11. 5-6.). The meaning is that where the robbers have taken away by force from the herdsman, the owner should not be paid (the price of) the beast. *Vighuṣṭhya tu ṛhatam chorairiti* (p. 111. 1. 7.) *where after a noise it has been taken by robbers &c.* (p. 303. 1. 7). Where it has been taken away openly by robbers after a loud beating of drums and the like, the herdsman is not liable to pay; i. e. if he informs the owner on the same spot 'immediately after the robbery.' 15 20

*Karṇan charma cheti* (p. 111. 1. 9.) *The ears, skin &c.* (p. 303. 1. 14.) 'Skin' i. e. the hide. *Wāldh* 'tails' i. e. such as had become a mark. *Bastm* 'bladder' i. e. the particular organ (which serves as) the receptacle for the flow of urine. *Snāyuh* 'tendons' i. e. *lat. vide Amara*<sup>1</sup>: "and tendon, muscle". *Rochanām* 'the yellow concrete bile' i. e. of the beast. These he should deliver over to the owners. In the case of dead beasts, other identifying limbs also should be shown. 'Signs should be shown' is also a reading. Then, signs in the body of the cattle such as brand-marks and the like should be shown. This is the meaning. 25 30

### Yājñavalkya Verse 165.

*Dandaparimāṇārthaḥ śloka iti* (p. 111. 1. 14.) *Verse laying down the measure of fine &c.* (p. 303. 1. 20.) The meaning is that as the other meaning was not obtained from the previously cited verses, Thirteen and a half panas is to be taken as the rule laid down. 35



## Yājñavalkya Verse 166.

5 *Tr̥ṇādyanyatarābhāva iti i. e. in the absence of grass &c. not owned by an owner &c. Anivārīta āhareḍiti (p. 111. l. 19.) should take without opposition &c. (p. 304. l. 7.)* The meaning appears to be that if opposed, should not take.

*Etachcha parigr̥hitaviśhayamiti (p. 111. l. 21.) This, however, supposes pre-occupancy (p. 304. l. 13.) i. e. what has been stated in the text the twice-born &c....grain, fuel and flowers.*

## 10 Yājñavalkya Verse 167.

*Prachurakaṇṭakasantānasyeti (p. 112. l. 5) with abundant thorny bushes etc. (p. 305. l. 3.) i. e. full of thorny trees &c.*

Here ends the Chapter regarding

'DISPUTES BETWEEN THE OWNER AND THE KEEPER OF CATTLE'.

## 15 Chapter XI.

## SALE WITHOUT OWNERSHIP.

20 *Vikrīyate asamakṣhamati (p. 112. l. 10.) sold behind his back &c. (p. 305. l. 16.) Behind the back of the owner i. e. in his absence; in short, without his permission. In such a place where a sale without ownership takes place, what would be the rule of law? Anticipating such a question, the Author introduces the text in the original; Tatra Kīmityāhetī (p. 112. l. 11.) In such a case what should be done? So the Author says (p. 305. l. 18.).*

## 25 Yājñavalkya Verse 168.

*Asambhūve drawyādāpi hīnamūlya iti (p. 112. l. 18.) not ordinarily resorted to; at a price lower than the original thing &c. (p. 306. ll. 5-6.) That is to say, even lower than the price which a thing originally deserves.*

30 *Prakāśaṃ krayataḥ śuddhiriti (p. 112. l. 21.) One purchasing openly is blameless &c. (p. 306. l. 11.). A sale which is so made as to be open; from such a one. This is the meaning.*

### Yājñavalkya Verse 169.

PAGE 83\* With a view to expose the fault in the interpretation by another<sup>1</sup> the Author expounds it further : Naṣṭama-  
parṣṭamityādīnā ( p. 112 l. 25 ) Beginning with *lost or stolen &c.* ( p.  
306. l. 20 ).

This is the import : A thing belonging to another which was lost 5  
or stolen and was obtained by purchase, acceptance as a gift, or the  
like method from one not the owner, if any one sells it also to another,  
such a purchaser should cause such a vendor to be apprehended by the  
King's messengers such as the night patrols or the like, for warding off 10  
( a charge of ) theft against himself, as also for the infliction of the  
Royal punishment. If, however, by any reason he is unable to have  
him captured or even to point him out, then the thing taken from him  
should be made over to the original owner, and then he becomes  
absolved.

The Author attacks this (interpretation) as faulty : Tadīdamanuṣa- 15  
pannamiti ( p. 112. l. 28 ) *But it is improper &c.* ( p. 306. l. 30 ).  
Here the Author points out a reason viz. that this would be a repetition  
of the text<sup>2</sup> presently to be mentioned viz. "When the seller is  
pointed out &c." Atonyathā wyākhyāyata iti ( p. 112 l. 29 ). So... 20  
*is explained otherwise* ( p. 306 l. 32. ).

The Author expounds the term 'having found' in the original text:  
Kreṭhastasthaṃ jātveti ( p. 112. l. 30. ) *having recognised a thing*  
*while the same is in the hands of the purchaser &c.* ( p. 307. l. 1. )

Tadwījñāpanakālātpṛāgiti ( p. 113. l. 2. ) *even before the time a*  
*complaint is made to the police &c.* ( p. 307. l. 6. ) i. e. before informa- 25  
tion is lodged with the police of the place.

### Yājñavalkya Verse 170.

Mūle samāhṛta iti ( p. 113. l. 8. ) *When the original taker is produced*  
( p. 307. l. 20. ) i. e. to say, the original seller. Krayaṃ śodhayit- 30  
waiva śuddho bhavati ( p. 113. l. 11. ) *He becomes exonerated only*  
*upon justifying the purchase* ( p. 303. ll. 5-6. ) i. e. by exhibiting wit-  
nesses regarding his purchase.

End of the Chapter on Sale without Ownership.

1 i. e. श्रीकृष्ण See Mitāksharā. Cf also Viśwārūpa on this verse.

2 of Yājñ. II. 170.

## Chapter XII.

## OF THE RESUMPTION OF GIFTS.

The Author points out in substance the topic to be mentioned in this Chapter : *Adhunā vihitāvihiteti* (p. 114. l. 23.) *now...proper or improper* (p. 311. ll. 3-6.). Resort to legally prescribed methods is non-resumption of gifts, and resort to means not legally prescribed is the non-delivery of what is donated; this is the sub-division. Generally, however, the title at law is called Gifts. This is the meaning.

The Author expounds the text of Nārada "when one having not properly disposed of a thing &c.": *Asamyagavihitamârgâśrayeṇeti* (p. 114. l. 26.) *not properly i. e. by means not laid down as proper* (p. 311. ll. 9-10.). In this very text is the title non-delivery of donations—intending to show this, the Author points out the sentence of dissolution of this entire clause: *Dattasyâpradānamiti* (l. 27.) *resumption of that which had been given &c.* (l. 11.)

In the exposition of the nature of the non-delivery of donations by resort to method not legally prescribed, the nature of its opposite i. e. the non-resumption of gifts is apparent by the context itself, and so has not been separately indicated. Intending to point out this, the Author says: *Vihitamârgâśrayatweṇeti* (l. 29.) *By having resort to legally prescribed means &c.* (ll. 12-13.)

The Author explains the nature of the non-resumption of gifts: *Dattasyānapākarmeti* (l. 28.) *non-resumption of what had been given &c.* (l. 15.). Having regard to the fact that having donated according to the legally prescribed method, its resumption is prohibited, it should not be taken back; this is the meaning. *Tachcha deydābhihedeneti* (l. 29.) *That, moreover, having regard to its division into what may be given &c.* (l. 17.) i. e. that title at law called Gifts.

*Atha deyamadeyamiti* (p. 115. l. 1.) *Now, what may be given, and what not &c.* (p. 34. l. 19.) What is to be given, as also a gift, are both varieties of non-resumption of gifts. What may not be given, as also what is not given, both are varieties of non-delivery of gifts. Thus the law of gifts is four-fold. This is the meaning.

*Aniṣiddhadânakriyâyogyamiti* (p. 115. l. 2.) *a fit subject for an unforbidden transaction of gift &c.* (p. 34. ll. 21-22.). Unforbidden, and that also fit to be the subject of a gift. Thus is the compound (to be solved) as e. g. one's own property, without detriment to the family.

*Aswatayā niṣiddhatayā cheti* (l. 2.) *either on account of its not being one's own property, or its being prohibited* (p. 311. ll. 23-24.).

*Anvāhita*<sup>1</sup> and the like not being one's own are not fit to be gifted. Where property is not sufficient for the maintenance of the family and one desires to make a gift, that is to be understood as unfit to be given on account of being prohibited. *Awyāwartaniyamiti* (1. 3.) *which cannot be revoked &c.* (p. 311. 1 26.) i. e. which cannot be taken back. 5

In pursuance of the meaning of the text of Nārada, the Author introduces the original text : *Tadetatsaṅkṣhepata iti* (1. 4.) *this in brief &c.* (1. 28.)

### Yājñavalkya Verse 175.

Above has been demonstrated in the text of Nārada the two-fold nature of invalid gifts viz. unfit to be given because not one's own, and unfit to be given because of being prohibited. There the variety of things unfit to be given as being forbidden, the Author points out by the negative test by an expression in the original text "without detriment to the family". *Kuṭumbāvirodhenetyaneneṭi* (1. 8.) "*without detriment to the family*"—*by this &c.* (p. 312. 1. 5. The meaning is that what is insufficient for the maintenance of one's family must not be given. 10

PAGE 84. The Author points out what has been stated as unfit to be given by reason of its not being one's own property, *Swamī dadyādityaneneṭi* (1. 10.) "*One's property he may give*", *by this* (p. 312. 1. 6.). 15

This is the import. : What is not one's own must not be given. Even if one's own property, what is insufficient for the maintenance of the family, must not be given ; thus (are) two kinds which must not be given. It may then be said, indeed by reason of not being one's own a group of five kinds has been stated by you as not to be given ; while eight kinds have been stated by Nārada as not to be given. So there would be a conflict. So the Author anticipates the objection as to the conflict with a view to refute it: *Yatpunâr Naradeneṭi* (1. 10.) *As to by Narada &c.* (1. 10.). 25

The Author refutes, *Etadadeyatwamātrābhihrāyeṇeti* (1. 13.) *This text only intends things which are inalienable* (p. 312 l. 16.). The import is that the enumeration in one group of the eight viz. the *Anvāhita* and the rest is only by reason of their common character of being unfit to be given, and not by reason of being not one's own property. Here the Author mentions the reason : *Putradârasarwaswell* (1. 14.). *Son, wife, the entire property &c.* (p. 312 ll. 17-18.). 30

1 A thing deposited as a collateral security (अङ्ग + आहित)

अर्थमात्रकायें अङ्गद्वाराचरानाम । दत्तार्थमिति यो दत्त स एतदङ्गद्वाराचरानाम ।

5. Having expounded the portion "one's own property may be given without detriment to the family," and with a view to expound the remaining portion viz. "except a wife, and a son," the Author introduces: Swam dadyādityaneneti (1. 15). *in the text viz. one's own property he may give* (p. 312. l. 20.).

### Yājñavalkya Verse 176.

- 10 Sthāwarasya vīśeṣataḥ (1. 23.). *especially of immovable property* (p. 103. l. 1). The Author mentions the reason for an open acceptance of a gift. Tasya suvarṇādiwaditi (1. 25.) *its...as...in the case of gold and other movables &c.* (p. 313 l. 16.).

- 15 The Author introduces the latter half of the aforesaid original text which is connected with the context. Evaṃ prāsaṅgikamiti (1. 26). *this—incidentally &c.* (p. 313 l. 17) Yadyasau dharmātprachyuto na bhavati iti (1. 28.). *if the other does not swerve from (the path of) religion* (p. 314 l. 1.) i. e. he to whom it has been promised to be given.

- 20 Having stated what deserved to be mentioned in regard to things to be given and not to be given, the Author introduces that which deserves to be mentioned in the matter of gifts made and not made: Nyāyamārgeṇa yaddattamiti (1. 30.) *Whatever has been completely given according to law* (p. 314. l. 5.)

- 25 By stating that what has been given (lawfully) must not be resumed, the resumption of its opposite viz. what has not been (properly) given follows from the context: So the Author says: Yatpunaranyāyeneti (p. 116. l. 1.) *What moreover in an illegal manner &c.* (p. 314. l. 8.) Adattan tu bhayakrodhetti (p. 116. l. 5.) *Invalid gifts are...fear, anger &c.* (p. 314. ll. 16-17.) Fear, and anger as well as sorrow—make up the compound expression, fear, anger, and sorrow; a sudden excitement (caused) by these. Pain<sup>1</sup> by this; in that manner. Thus
- 30 is the compound (to be solved).

- 35 The Author sets about expounding the collected text of Nārada stated before: Ayamārtha iti (1. 9.) *The meaning is this &c.* (p. 314. l. 25.) There also, the Author expounds the first expression viz. "price for a merchandise": Paṇyasyeti (1. 9.) *for a merchandise &c.* (p. 314. l. 25.). Wishing to indicate an intention that the expression "valid gift" in the text of Nārada is used in connection with the "price of a merchan-

1 On p. 89. l. 16. For देनायकत्वेति read देन कृत् त्वेति।

dise" and like other things, as well as independently by way of brevity, the Author says, *Yachhādṛṣhīārthamiti* (l. 11.) *What also for purposes<sup>1</sup> not mentioned &c.*

*Sahasramiti paribhāṣhya dadātīti* (l. 16.) *stipulates for a thousand and gives*, (p. 315, l. 13.) The meaning is that having mentally determined that a hundred is to be given, if by reason of an exuberation of the heart or a similar cause a declaration was made that a thousand shall be given, even though not intended in mind, what is given in pursuance of the declaration.

The text common to all disputes has been stated by the text of *Kātyāyana* himself, so the Author says, *Tathedamaparamiti* (l. 22.) *Moreover, here is another &c.* (p. 316, l. 6.)

Thus ends the Chapter on Non-delivery of Gifts.

### Chapter XIII.

#### RESCISSION OF PURCHASE.

*Dwiguṇan tu tṛtīyenḥīti* (p. 117, l. 5.) *Twice as much on the third day &c.* (p. 317, l. 9.) double of the thirtieth stated before i. e. the fifteenth part. The author expounds insubstance the portion "After that time, it is absolutely the purchaser's": *Paratonuśaya iti* (l. 5.) *thereafter...a rescission &c.* (p. 317, l. 11.) *Etachcha bijādīwyatīrīkteti* (ll. 5-6.) *This, moreover...other than seed and the like &c.* (p. 317, ll. 11-12.) The compound is to be solved as—other than seed and things perishable by use.

Having thus borne in mind the statements in other *Smṛtis*, the Lord of the Yogis points out the mode of rescission in cases other than those mentioned before; so the Author says: *Bijādīkraye punariti* (l. 7.) *In the purchase of seed &c.* (p. 307, l. 13.)

The Author mentions a special rule for purchases made after inspection: *Yatpunaḥ parīkṣhyeti* (l. 16.) *What therefore had been examined &c.* (p. 318, l. 8.)

#### Yājñavalkya Verse 178.

Although in the text "the trial of seed, metal, beasts of burden, jewels, females, milch cattle and males," enumerated in the order viz.

1 The reading in the *Mitāksharā* is *प्राप्त्यर्थम्* *et*, while the reading here appears to be *प्राप्त्यर्थम्*. This is exactly what is explained in the *Balambhatī*, P. 287, ll. 20-23.

seed &c. still in the case of milch cattle such as the buffalo and the calving and milking, the test is easily made as to the lower or higher nature by means of the milk, the Author mentions that prominently, Dohyādīparīkṣhâprasangeneti (l. 18.) *While treating of the inspection of the milch cattle &c.* (p. 318. l. 15.)

### Yājñavalkya Verse 179.

Paṭādau panchapālā vṛddhiriti (p. 118. l. 2.) *In the case of cloth &c. the increase is five palas* (p. 319. l. 17.). Here although in the text  
10 "woolen and cotton yarns" a blanket, being the first, is (deemed to be) enumerated, still the statement that cloth etc., is proper, as the inverse order is intended.

### Yājñavalkya Verse 180.

Yatra prāvârâdau iti (l. 8.) *Where in an upper garment &c.* (p. 319 l. 29.) *Prāvâra* i. e. an upper garment, vide Amara "the two viz. *prāvâra* and upper garment are the same".

Here ends the Chapter on Rescission of Purchase.

## Chapter XIV.

### BREACH OF CONTRACT OF SERVICE.

Aparaṃ vivâdapadamiti (p. 118. l. 20.) *another title of law* (p. 320. l. 20.) The meaning is that not having been set out in  
PAGE 85" the text<sup>2</sup> "Of these the first is Recovery of Debts &c."  
25 another title at Law.

The Author expounds the text of Nârada "If one has promised to render service" &c. : Âjñâkaraṇamiti (l. 23.) *performance of an order &c.* (p. 320. l. 29.)

The Author states the common epithet of a pupil, an apprentice,  
30 a hired servant, an operative and others ; Teshâmâdya iti (l. 23.) *Of these the first &c.* (p. 321. ll. 3-4.) Sāmānyam aswatantratwamiti (l. 28.) *state of dependence is common &c.* (p. 321. l. 14.) The meaning of this : Of these five i. e. of the pupil and the rest, dependence has been stated as the common characteristic by the sages viz. great ṛṣhis.  
35 Among these, in the group of four beginning with the pupil and the

rest, the workman by contract belongs to a different category and has as such been mentioned by the sages. The meaning is that the workman's is a kind different from and inferior to all the four. Moreover their living i. e. usage is also special on account of their performing auspicious duties. The author points out at details what has been stated before viz. performing auspicious duties is their special ( means of ) livelihood.

The Author expounds the portion of the aforestated text of Nārada viz. : "A student, an apprentice, a hired servant; and the fourth, a person specially appointed (to do a thing)" : Tatra Śiṣhya ityādinā. Beginning with *there a student &c.* (p. 321. l. 23).

In the text (p. 119. l. 5.) "the house, and the gateway, the places where impurities are deposited &c." the Author explains the expressions 'place where impurities are deposited', 'dust-bin' and 'clearing', Aśuchiṣṭhānamityādinā (l. 6.) Beginning with *place of impurity &c.* (p. 321. l. 26).

The Author mentions the three-fold division of a paid servant from among the pupil, the apprentice, and a paid worker : Bhṛtakascheti (l. 7.) *A hired servant &c.* (p. 321. l. 30.)

It has been stated that slaves are of fifteen kinds; the Author details these : Dāsāḥ punarītyādinā (l. 8.) Beginning with *Slave again &c.* (p. 322. l. 1.) Dhvajārhta iti (l. 20.) *made captive under a standard* (p. 322. l. 30.) Daṇḍadāsascheti cha (l. 21.) *a slave of punishment* (p. 322. l. 33.) One acquired in a fight, is a 'slave under a standard'. A man who has swerved from (the vow of) hermitage, and who has not performed a penance when the king has ordered life-long slavery as the punishment for such a one, he is known, as a slave of punishment, who has swerved from his vow as a hermit. This is the distinction. Na tu pariśaṅkhyārthaṁ (l. 21.) *and not with a view to limit the number.* (p. 322. l. 35.) The meaning is, not intended to exclude all except those enumerated.

Having thus stated, in the course of context, the text of Another Smṛti, the Author discusses the topic in the original Text : Tatralpā-mityādinā (l. 22) *Of these, here &c* (p. 323 l. 1.)

Now the Author introduces the original text : Dāsāntawāśīnoriti (l. 25.) *regarding a slave and an apprentice &c.* (p. 323. l. 8.)

1 वृत्तिरिति in its technical sense means exclusion. Here the sense is that this is not an exhaustive enumeration, so as to exclude any other kind, but only as indicating that these seven (among others) are slaves.



## Yājñavalkya Verse 182.

Apīśabdādâhlito dattascheti (l. 28.). *From the use of the word 'also' (api), are included one 'pledged', as also one 'given'.* (p. 323. ll. 17-18.). (the expression) 'by robbers' (is understood to) follow i. e. pledged and given by robbers, the pledging by the owner being presently to be mentioned hereafter. *Yadi swâmi no muñchatiti* (l. 29.) *If the owner do not release &c.* (p. 323. l. 19.) i. e. he who has obtained by force or by an act of theft, and acts as if he were master himself.

The Author expounds the portion of the original text viz. by paying the expenses of maintenance : *Bhaktadâśâdīnām* (p. 120. l. 1.) *of a hired servant and others &c.* (p. 326. l. 1.) *Sambhakṣhitam Yaddurbhikṣha iti* (l. 5.) *what has been consumed during famine &c.* (p. 324. l. 13.) What has been consumed during famine cannot be wiped off by labour. The meaning is that he is not discharged 'by merely' working for him from whom he eats the food, but by doing work for him and by a donation of a pair of cows. This, it should be noted, is the special point in the text of Yājñavalkya.

*Pratīśirṣhakadâneneti* (p. 120. l. 9.) *on giving each a substitute* (p. 324. ll. 24-25.). Shall be redeemed by offering another person of equal capacity. The meaning is that by offering another man equal to himself in the capacity for work, he may be released.

The Author states the substance of the text "Upon the female slave being kept in check" : *Dâśena saheti* (l. 11.) *with the slave &c.* (p. 324. l. 29.) *Tenaivoktamiti* (l. 15.) *Has been laid down by the same Sage* (p. 325. l. 2.) 'The same sage' i. e. by Nārada.

## Yājñavalkya Verse 183.

*Dâravaddâśateti* (l. 25.) *slavery is analogous to the condition of a wife* (p. 326. l. 4.) The meaning is that as a marriage is in the descending order and not in the inverse order, so is slavery also.

## Yājñavalkya Verse 184.

*Swaślipamichhanniti* (p. 121. l. 1.) *If one wishes to be initiated into the art of his own craft &c.* (p. 326. l. 23.) i. e. the craft prescribed for his own caste.

Thus ends the Chapter on Breach of Contract of service.

## Chapter XV.

### TRANSGRESSION OF A COMPACT.

The Author expounds the text of Nārada viz. "Among the  
PAGE 86\*. Pākhandis, Naigamas &c.": Pāribhāṣikadharmeneti (p.  
121. l. 12.) *in accordance with special provision of law* 5  
(p. 328. ll. 2-3.). It has been said that it has been pointed out by a refer-  
ence to transgression; the Author exhibits it : Tadwyatikrāmyamāṇa-  
miti (1. 12.) *When this is being transgressed &c.* (p. 328. l. 4.).

This is what is meant here : By (means of) the expression "Non-  
Transgression of a compact" having named in an affirmative<sup>1</sup> manner 10  
the opposite nature of the title of Law known as the Transgression of  
a compact, by saying that that is known as a title at Law, the Title at  
Law is indicated in the negative manner, and so the name is in the  
negative form.

The Author introduces the original text : Tadupakramārthamiti 15  
(1. 4.) *By way of an introduction to the same* (p. 328. l. 6.)

### Yājñavalkya Verses 185-192.

Anubandhādyaṭiśayetī (p. 122. l. 3.) *In cases of aggravated offences*  
*or the like* (p. 329. l. 27.). Anubandha means fault i. e. to say, offence. 20  
Rājñā prathamāsāhasamiti (1. 13.) *by the king with the first amerce-*  
*ment &c.* (p. 330. l. 21.) In this (portion of the) book by the use of the  
pronoun 'which', the word 'that' followed as of course from the context  
and so that word has not been used. The rest is easy to under-  
stand. 25

Thus ends the Chapter on Transgression of a Compact.

## Chapter XVI.

### THE NON-PAYMENT OF WAGES.

In regard to the Title of Law viz the Non-payment of Wages the  
characteristics of which have been thus stated in Another Smṛti, the 30  
Lord of the Yogy states a decision, so the Author says : Tatra utra-  
yamāhetī (p 123 l. 11 ) *There the Author mentions a decision &c.*  
(p 333. l. 11 )

### Yājñavalkya Verse 193.

Bhṛtyāya vetanam dadyāditi (1. 17 ) *pay wages to the servant.* 35  
(p. 333 l. 28.) The meaning is : He who is maintained is a servant.

Yathâkramamiti (l. 18.) according to the agreement &c. (p. 334. l. 1.) at the beginning, in the middle, or at the end, i. e. without infringing the period of time determined by the accord of parties. By the expression "As may have been settled in regard to the work" is meant that money determined by the arbiter by regard to the work is called wages, and thus it should be regarded as a statement of the nature of wages.

### Yājñavalkya Verse 195.

10. Yastu bhr̥tya iti (p. 124. l. 1.) *A hired servant who however &c.* (p. 334. l. 24.). Here the order of words should be—at an improper place or time transgresses through insolence or the like.

### Yājñavalkya Verse 196.

15 Anekabh̥r̥tyasādhye Karmaṇi (l. 6.). *For a task to be accomplished by several workmen &c.* (p. 335 l. 10). i. e. in the case of a work being performed after a stipulation that it should be accomplished for certain wages by one, two, or more women working together. Na punaḥ samam-iti (l. 11). *and not an equal amount* (p. 335. l. 24). For one work, commenced under an agreement by five workmen for performing it for 10 paṇas but owing to illness or other cause that work was not completed by them all, but only a portion was done. In such a case payment should not be made at two paṇas every man, but more or less should be given to each according to the work done by him. This is the meaning. From this also it follows that on the completion of each work although the owner has made payment of the stipulated amount, the labourers should, nevertheless, take it by dividing it (among themselves) only by regard to the work performed by each.

An Objection. It may be said, indeed, by saying that "an equal amount should not be given," it would be tantamount to saying that wages should be paid only in accordance with the work done by each. Then it comes to this viz. payment should be made by dividing and distributing individually. This is improper. Since a fixed remuneration was stipulated with labourers jointly only, and not severally, it is proper that wages should be received according as stipulated.

35 Anticipating such an objection, the Author refutes it : Na Chāvayava-śaṇ iti. (p. 124. l. 11.). *Not...for the several parts &c.* (p. 335. l. 25.). This is the import : Although a distributive<sup>1</sup> payment was not stipulated, still, as it is proper that pay-

ment should be made according to the work, and under the authority  
PAGE 87\* of the text also, payment is made distributively. This  
is a good answer, and so has been incorporated by the  
Author in the book.

Sādhye tūbhābhyāmīti ( p. 124. l. 12. ) *If, however,...be* 5  
*accomplished by both &c.* ( p. 335. l. 26. ). The expression "by  
both" is only indicative. Therefore, it means also if accomplished by  
many. In the chapter on the Title of law called Breach of Contract of  
Service, commencing with the text "...Five sorts of attendants &c" and  
also by "Among these are four sorts of labourers, and slaves ( of the 10  
fifth category ) are of fifteen kinds : A student, an apprentice, a hired  
servant, and the fourth, a person specially appointed to do a thing"  
having stated the five-fold division of attendants, the three-fold division  
of a hired servant has also been stated thus : "Here, the best is that of 15  
a soldier, the agriculturist is the middle class, and the porters are the  
lowest class : Thus there are the three classes of hired servants." Thus  
by the text<sup>1</sup> "one who having received the wages &c." has been men-  
tioned an agricultural labourer in regard to his hire, now the Author  
points out a special rule relating to a hired soldier, and a hired carrier.  
and so he says : Āyudhīyabhārawāhakāvīti ( p. 124. l. 15. ). *A soldier* 20  
*and a carrier &c.* ( p. 335. l. 30. )

### Yājñavalkya Verse 197.

Bhāṇḍa means a vessel or the like, vide the Amara<sup>2</sup> "the words  
Āwapana, Bhāṇḍa, Pātra, Amatra, and Bhājana ( all mean a pot or a 25  
vessel )". Moreover the same Author indicates the word to have  
several<sup>3</sup> meanings : "The word Bhāṇḍa is used for horses' ornaments,  
a vessel, or the stock-in trade of a grocer." Wāhakena nāṣitamīti ( p.  
124. l. 18. ). *be destroyed by a carrier &c.* ( p. 336. l. 7. ). The word carrier  
also includes by implication one with arms. 30

### Yājñavalkya Verse 198.

Bhṛtyantaropādāna iti ( l. 27. ) *When another servant can be procured*  
*&c.* ( p. 336. l. 32. ). Procuring, taking up i e offering. Etachchāwyādhi- 35  
tādiviṣhayamīti ( p. 125. l. 1. ) *Thus, moreover, regards one who has not*  
*had any disease &c.* ( p. 337. l. 10. ) i. e. what has been stated in the  
text beginning with "one who raises an obstruction at the time of  
starting" &c.

How can thus the division of the topic be ascertained? Anticipating such a question the Author says—from the statement of the rule by Manu regarding discrimination in determining punishment, when he is not affected by a disease &c. *Bhṛto nārta iti* (1. 1.) *A hired servant not being ill &c.* (p. 337. l. 11.). *Bhṛto* is a hired servant. 'Not being ill' i. e. being without any disease &c. Here having regard to the text of Manu viz. "no wages shall be paid to him", it is to be taken in connection with the remaining portion of the aforestated clause.

Yastvapagatawyādhiḥ swastha eveti (p. 125. l. 5.) *One, moreover, who after he is cured of the disease, being perfectly at ease &c.* (p. 337. l. 20.). Being affected by a disease and afterwards (one) cured of the disease. One not being affected by a disease is perfectly at ease. This is the difference.

Thus ends the Chapter on Non-payment of Wages.

15

## Chapter XVII.

### GAMBLING AND BETTING ON ANIMALS.

Adhunā dyūtasamāwayākhyamiti (p. 125. l. 11.) *Now...called Gambling and Betting on Animals &c.* (p. 338. l. 3.) Gambling as well as Betting on animals (make up the compound expression) Gambling and Betting on Animals. This is the definition. A title of Law in which occurs this is known in that manner. Betting which is accomplished by means of inanimate things such as the dice and the like is Gambling, and what is accomplished by means of animate beings such as the cocks and the like is Betting on Animals. According to the text of Nārada both these are connected with the dice. With a view to state this, the Author points out : *Akṣhaḥ pāśakā ityādina* (p. 125 l. 12). Beginning with *Akṣhaḥ* means dice &c. (p. 338 l. 7).

In the title of Law called Gambling and Betting on Animals thus defined and marked, Yājñavalkya points out the remuneration for the keeper of the gambling Hall, so the Author says, *Tatra dyūtasabhādhi-kāriṇa iti* (1. 19) *There..... of the keeper of the Gambling Hall &c.* (p. 338 l. 21).

30

### Yājñavalkya Verse 199.

Tadasāraya śatiketi (p. 125 l. 22) *a hundred in reference to it.* (p. 338 l. 29). In reference to it i. e. in reference to the bet. The meaning is a hundred-fold increase, or exceeding that also.

This is what (is intended to be) said : In whichever bet one wins, a wager fixed by a hundred or a more of the *Kākinī* or other coin, that winner is called a ten percent game-keeper. The meaning is that the officer in charge of the gambling hall should take five *Kākinīs* or the like when a hundred *Kākinīs* or the like are won.

### Yājñavalkya Verse 201.

The Author expounds the word *Sthāna* (assembly) in the original text : *Avipratipannam iti* (p. 126 l. 12) *regarding which there is no difference of opinion &c.* (p. 340 ll. 12-13). i. e. put on in the assembly, in short, not disputed.

### Yājñavalkya Verse 202.

PAGE 88\* Kwachiddūtan niṣheddhum iti (p. 126 l. 19) ...by way of prohibiting gambling in certain cases &c. (p. 340 l. 27). 10  
From the penal rule for one gambling with false dice, it appears that gambling with such dice as also gambling in a place without a keeper has been prohibited.

Thus ends the Chapter on Gambling and Betting.

## Chapter XVIII.

### OF ABUSE

The Author expounds the text of Nārada viz. "the country, caste &c." *Desādīnām iti* (p. 127 l. 8) *about a country &c.* (p. 342 l. 15). The Author points out the abusive languages of countries &c. by examples : 25  
*Tatra Kalahapriyāh ityādīnā* (p. 127 l. 10). *There...are fond of quarrelling &c.* (p. 342 l. 19). *Ādigrahaṇātsawadyeti* (p. 127 l. 11). *By the use of the term adi, (so forth)...one's own learning &c.* (p. 342 ll. 22-25)  
The meaning is that without directly reviling another individual, with the very object of condemning him and even when oneself is learned 30  
or not a learned man, or by<sup>1</sup> reviling the science of logic or a mechanical

1 There is a mistake in the print here. Line 30 on p. 87 should be read as part of verse 199, and at its end, and not at the commencement of Verse 201 as has been done in the print.

2 On p. 83, ll. 7, 8. for नर निद्राभ्यामेव read नरनिद्राभ्यामेव and in 10 for निद्राभ्यामेव read निद्राभ्यामेव.

art in which another is proficient, and thus reviling learned men and the like.

In regard to the offence of Abuse, having laid down a three-fold division by regard to the little viz *Niṣṭhura* (cruel), *Aśīlā* (indecent) and *Tivra* (sharp), for mentioning different punishments, the characteristics of *Niṣṭhura* &c. have also been mentioned by Nārada, so the Author says : *Tasya*<sup>1</sup> *cha dandatâratamyârthamityâdinâ* (p. 127 l. 12) *of that with a view to discrimination as to punishments* &c. (p. 342 ll. 26-28). Here moreover the distinction is that a *niṣṭhura* (cruel) accusation is of a lower and the *tivrā* (sharp) is of a higher degree.

It has been stated before that indecent means insulting ; that insult is a common characteristic in the three varieties of abuse viz. *niṣṭhura* and others, and then it would be incongruous to mention as a special characteristic of *aśīlā* (indecent) variety of abuse as has been done in "abuse couched in insulting language is *aśīlā*", and so the Author says that the word *nyaṅga* is used here in the sense of untrue and ( therefore ) censurable : *Atra nyaṅgamiti* (p. 127 l. 16). *Here insulting means* &c. (343 l. 8).

### Yājñavalkya Verse 203.

Now the Author introduces the original text *Tatra*<sup>2</sup> *niṣṭhura-krośa iti* (p. 127 l. 18) *of these...a Niṣṭhura abuse* &c. (p. 345. l. 13).

The Author points out the nature of ironical statements whether true &c. by examples : *Netrayugalahina ityâdinâ* (p. 129 l. 22.) *devoid of both the eyes* &c. (p. 343. l. 24.)

It may be said that Manu has prescribed a fine not less than a *Kārshāpaṇa*<sup>3</sup> in the text "not less than a *Kārshāpaṇa*," and so there is a conflict with him by reason of this rule laying down as a punishment 13½ *Panas*; to that the answer is that such a rule is intended when a member of the *Varṇa* lowest in order in point of usage &c. is attacked, and when (a member of) the same *Varṇa* is the accuser, he is to be punished with a fine not less than a *Kārshāpaṇa* and that this punishment has no reference to all, and thus the Author removes the contradiction by (pointing out) the difference

1 The Subodhini reads नय च

2 Ch. VIII. 274.

3 A coin greater in value than a *paṇa*=4 *Kakins* i. e. 20 cowries of. "एतद्वन्मयं दण्डाकारिणी नाम दण्डमन्त्रः"—भास्कराचार्यः अथवाहमन्त्रे.

in the objects (of its application): *Kāṣam wāpyatha wā Khanjam ityaddinā* (p. 127 l. 25). *One-eyed or lame &c.* (p. 343 l. 30). A punishment in which *Kārshāpana* is the least—such a one. This is the meaning.

### Yājñavalkya Verse 205.

By way of indicating the meaning of 'Indeed' the Author says *Anyām' wā twajjāyāmiti i. e. or even another viz. your wife.*

The Author mentions a special punishment also for an abusive language under special circumstances: *Evam samānaguṇeshultya-* *dinā* (p. 128 l. 6). *Thus for men of equal merits &c.* (p. 344 l. 16). From the prescription of a double and the like sentence in this clause by relation to the amount mentioned in the previous clause, it appears that it relates to the abusive language.

### Yājñavalkya Verse 206.

*Parabhāryāsu punaraviśeṣheṇeti* (p. 128 l. 9). *As for...regarding 'others' wives, a uniform &c.* (p. 345 l. 1). The wife may be of one inferior or superior in conduct as compared with the abused. Here the expression 'other's wives', refers to the wife of any; for it should be seen, it is for this that the expression 'uniform' is used.

It may be argued, indeed, in the commentary on the previous clause a fine of twenty-fives *panas* has been laid down by taking up the expression viz "I shall have intercourse" with your wife—as something in addition. While here fifty *panas* have been stated, thus there is

a mutual contradiction. To that the answer is, no, it is not so. In the first, a special punishment has been stated for an abuse of a man through the wife; here the abusive language is addressed to another's wife herself, and thus there is a difference.

*Uttarādharaḥwāpekṣhyeti* (p. 128 l. 17) *by reference to the relative superiority or inferiority &c.* (p. 345 ll. 21-22). i. e. by regard to a discrimination as to the inferiority or superiority in the *Varna* and *Jāti*. The Author points this itself by an example *yathā murdhāvasikṭamityādinā* (p. 128 l. 18) as a *Murdhāvasikṭa* &c. (p. 345 l. 22). Here is an abuse made by a *Brāhmaṇa* in reference to a *Murdhāvasikṭa*.

*Pratīlomāpawādeṣu* (p. 207) *in the case of an abuse of a superior class &c.* According to the text stated above viz: "In the descending



order of the *Varṇas*" taking it as established that in the case of an abuse by a *Kṣatriya* of a *Brāhmaṇa*, and in that of an abuse by a *Brāhmaṇa* of a *Kṣatriya* the penalty presently to be mentioned to be a hundred *paṇas*, and fifty *paṇas* respectively, the Author proceeds

5 *Kṣatriyākṣhepanimittādīnā* (p. 128 l. 13) which is the penalty for the abuse of a *Kṣatriya* (p. 345 l. 25). *Kinchidadhikamiti* (l. 89) slightly-above &c. (p. 345 l. 24). Slightly, meaning thereby a quarter; and here that should be understood as the fourth of a hundred. Intending this very thing, the Author says, *Panchasaptatyākamiti* (l. 19) viz. seventy-

10 five &c. (l. 25). The meaning is that by regard to a hundred, twenty-five is a quarter, seventy five is slightly more than fifty i. e. by a quarter.

The Author states the penalty for an abuse by a *Kṣatriya* of a *Mūrdhāvasikta* : *Kṣatriyopi tam*<sup>1</sup> (p. 128. l. 19.) A *Kṣatriya* also...

15 him (p. 345. l. 26.). *Tam* (him) i. e. *Mūrdhāvasikta*. Here the penalty for an abuse of a *Brāhmaṇa* by a *Kṣatriya* is a hundred, the amount less by a quarter seventy-five, is the penalty for an abuse of a *Mūrdhāvasikta*, would be less as compared with that of a *Brāhmaṇa*, and more as compared with that of a *Kṣatriya*.

20 It is less by a quarter than a hundred the punishment for an abuse by a *Kṣatriya* of a *Brāhmaṇa* or a *Kṣatriya*, and being seventy-five i. e. a quarter more than fifty the measure for an abuse by a *Brāhmaṇa* of a *Kṣatriya*, and the same is also for that committed by a *Kṣatriya* of a *Mūrdhāvasikta*, these two—the *Brāhmaṇa* and *Kṣatriya*—the

25 *Mūrdhāvasikta* being superior to *Kṣatriya*, for an abuse by a *Mūrdhāvasikta* of a *Brāhmaṇa* the fine of seventy-five only being a quarter less than a hundred, the penalty for an abuse by a *Kṣatriya* of a *Brāhmaṇa*, similarly a *Mūrdhāvasikta* being inferior to a *Brāhmaṇa*, the fine for an abuse by a *Mūrdhāvasikta* of a *Kṣatriya* being seventy-five

30 i. e. a quarter more than fifty the measure for an abuse made by a *Brāhmaṇa* of a *Kṣatriya* by reason of its being made by a *Brāhmaṇa*. Thus the import is that both ways the penalty is the very same.

Thus having stated the punishment for a mutual abuse between (members of the) *Varṇas* and *Jātis*, the Author mentions the penalty

35 for an abuse among *jātis* themselves, i. e. the *jātis* born from a *Brāhmaṇa* in a *Kṣatriya* or a *Vaiśya* woman i. e. a mutual abuse between the *Mūrdhāvasikta* and *Ambāshṭha* : *Mūrdhāvasiktāmbāshṭhayoriti* (p. 128. l. 207.) between a *Mūrdhāvasikta* and an *Ambāshṭha* &c. (p. 354.

1 This is another reading.

1. 29.) Here, in the place of the *Mūrdhāvasikta*, and in the place of the *Kṣatriya* is the *Ambashtha*. The rule to be understood is that for an abuse by an *Ambashtha* towards a *Mūrdhāvasikta* a hundred, and for a converse, a fifty.

With a view to indicate that between the *Varnas* and *Jātis* or among the *Jātis* themselves—for an abuse between (members of) a descending and an ascending order the penalty to be determined is on the same line as stated before i. e. less or more by a quarter, the Author says : *Evamanyatrâpiti* (1. 22.) *Similar...in other cases also* (p. 346. 1. 2.). The method of determination, moreover, has been indicated in connection with an abuse of a *Mūrdhāvasikta* viz. "as a *Mūrdhāvasikta* &c."

For an abuse by a *Brāhmaṇa* of an *Ambashtha* the penalty is thirty-seven and a half *panas*. Here the penalty is fifty. Here the determination of the quarter is by regard to fifty and not to a hundred.

For, as compared with the *Kṣatriya* an *Ambashtha* being inferior, and by regard to a *Vaiśya* superior, the penalty for an abuse by a *Brāhmaṇa* of a *Kṣatriya* viz. being fifty *panas*, an amount greater than it by a quarter of the same viz. thirty-seven and half, shall be imposed. This is the meaning.

In the case of an abuse by a *Brāhmaṇa* of a *Nishāda*,<sup>1</sup> the penalty is eighteen and three quarters of *panas*.<sup>2</sup> Here the determination of the fourth is by relation to twenty-five. Therefore (the status of) a *Nishāda* being inferior to (that of) a *Vaiśya* and superior to that of a *Sūdra*, of the penalty which is for an abuse by a *Brāhmaṇa* of a *Vaiśya* viz. twenty-five, a quarter less than that, as also of the penalty which is for an abuse also by a *Brāhmaṇa* towards a *Sūdra* viz. twelve and a half *panas*, more by a quarter than that viz. eighteen and three quarters is the penalty. This is the meaning.

For an abuse by a *Nishāda* of a *Brāhmaṇa*, the penalty is one hundred and seventy-five. Here, moreover, the determination of the quarter is to be also by regard to a hundred. For, by regard to a *Sūdra* a *Nishāda* being superior, as also by regard to a *Vaiśya* being inferior, (as compared) with the corporal punishment of death which is for an abuse by a *Sūdra*<sup>3</sup> towards a *Brāhmaṇa*, a money

1 A son born of a *Brāhmaṇa* by a *Sūdra* wife see YJñ. I. 91.

2 Here there is a mistake in the print. On p. 89, l. 26 between the last two words दशे and च one entire line has been omitted. The correct text is (दशे) अशति । अथ पञ्चविंशत्येकस्य च दशसंख्या । ततश्च त्रैविंशत्येकस्य सप्तसंख्यादस्य द्वाविंशत्येकस्य च दशसंख्या । ततश्च त्रैविंशत्येकस्य दशसंख्या । (य. दशविंशति)

3 On p. 89 l. 30. for द्वाविंशत्येकस्य read द्वाविंशत्येकस्ये.

fine being<sup>1</sup> inferior, the punishment happens to be of a hundred and seventy-five which is a little less than the penalty for an abuse by a *Śūdra* of a *Brāhmaṇa*, and a little more than a hundred and fifty which is the punishment for an abuse by a *Vaiśya* of a *Brāhmaṇa* i. e. a hundred and seventy-five. This is the meaning.

For an abuse by an *Ambaśṭha* of a *Brāhmaṇa* the penalty is a hundred and twenty-five. As compared with a *Vaiśya* an *Ambaśṭha*<sup>2</sup> being superior, and as compared with a *Kṣatriya* being inferior, a punishment less than that which is for an abuse by a *Vaiśya* of a *Brāhmaṇa* viz. a hundred and fifty, and more than a hundred which is the penalty for an abuse by a *Kṣatriya* of a *Brāhmaṇa* viz. a hundred and twenty-five occurs. This is the meaning.

For an abuse by a *Mūrdhavasikta* of a *Brāhmaṇa* has been pointed before. This rule of determination among the *Varṇas* and *Jātis* for an abuse of a descending or an ascending order is also that among the *Jātis* themselves. In the case of an abuse by an ascending order of that of the descending one, however, like that in the case of *Brāhmaṇa*, *Kṣatriya* and *Vaiśya* in the case of the *Mūrdhavasikta*, *Ambaśṭha* and *Niṣāda* also, the determination of the penalty is to be inferior viz. fifty, twenty-five, twelve and a half, one and a half of a hundred, a hundred and fifty.

This is what is (intended to be) said : In the case of an abuse of one who is superior<sup>3</sup> to and more remote, a penalty greater than that for one who is nearer, so also for an abuse of one who is inferior to and one who is more remote, a less penalty.

We (now) resume the context : *Evam sarvavarṇa-viṣhaya iti* (p. 128. l. 23.) thus for all the *Varṇas* &c. (p. 346. l. 3). All i. e. the *varṇas*. Thus is the compound (to be solved). All i. e. the *Mūrdhavasikta*s and others; the *varṇas* such as the *Brāhmaṇas* and others discussed in the clause about two-fold in the previous sentence i. e. in (the clause) "of an inferior half ; two-fold :

### Yājñavalkya Verse 207.

The Author illustrates the two-fold and three-fold by examples: *Śatapaṇāḥ...Sārdhaśatapaṇā iti cha* (p. 128. l. 27.) a hundred....a

1 For दण्डस्यान्यत्रेव read दण्डस्य न्यत्रेव.

2 See Yājñ. I. 91. for the terms दूषयिषिन्, अपहृ, विषद् and पारस्य.

3 For स्वस्वामावेष्टितो read स्वस्वामात् सविहितो.

4 The Mātākaśharā reading is सवर्जविषये.

*hundred and fifty paṇas &c.* Here the plural in the term *daṇḍāḥ* (punishments) is by regard to the (p. 346. ll. 15-16.) plurality of the abuses of the *Varṇas* which is the cause. For, (an abuse) by the *Kṣatriya* and *Vaiśya* towards a *Brāhmaṇa*, by the *Vaiśya* and *Śūdra* towards a *Kṣatriya*, and by a *Śūdra* towards a *Vaiśya*, thus even in the descending order there is multiplicity of offences.

For an abuse by a *Śūdra* of a *Brāhmaṇa*, the punishment is corporal only, not of money.

The rule stated for an offence committed by the *Kṣatriya*, *Vaiśya* or *Śūdra* in regard to a *Brāhmaṇa*, the Author extends to an offence by a *Vaiśya* or *Śūdra* in regard to a *Kṣatriya*: *Viṭśūdrayorapiti* (p. 129. l. 1). *also of a Vaiśya and Śūdra &c.* (p. 346. l. 23). One who is close to one who is near, is lower down by one class i. e. separated by one; e. g. for the *Kṣatriya* and *Vaiśya* who are lower down immediately and by one grade (respectively) than a *Brāhmaṇa*, as a penalty is for an offence against a *Brāhmaṇa* by the *Kṣatriya* and *Vaiśya*, similarly is a penalty for the *Vaiśya* and *Śūdra* who are immediately lower down or more than one down than the grade of a *Kṣatriya* respectively. This is the meaning.

For an abuse of a *Brāhmaṇa* by a *Kṣatriya* who is immediately after the *Brāhmaṇa* as the penalty is a hundred, so also is a hundred for an abuse of a *Vaiśya* by a *Śūdra* who is immediately after the *Vaiśya*. So the Author says: *Śudrasya cheti* (p. 129. l. 2.) *for a Śūdra also &c.* (p. 346. l. 25.).

The Author expounds the second half viz. "of one of a lower class &c." *Ānulomyena tuiti* (p. 129. l. 9.) *of the lower classes however &c.* (p. 346. l. 27.). *Brāhmaṇākrośanmīttāditi* (p. 129. l. 3.) *for abusing a Brāhmaṇa* (p. 346. l. 29.) i. e. from a hundred which is the penalty on account of an abuse by a *Kṣatriya* in regard to a *Brāhmaṇa*. *Prati-vaṇṇamardhasyārdhasyōti* (p. 129. l. 4.) *of a half in the case of each class respectively &c.* (p. 346. l. 30) For an abuse made by a *Brāhmaṇa* towards a *Kṣatriya* half of a hundred i. e. fifty is the fine; for an abuse made by him also towards a *Vaiśya*, half of a fifty i. e. twenty-five, and for an abuse made by him similarly towards a *Śūdra* half of twenty-five i. e. twelve and half *paṇas*. This is the distinction. *Śūdre dwādaśako dama iti* (p. 129 l. 6) *in (the case of) a Śūdra the fine shall be twelve &c.* (p. 347. l. 5) i. e. "with a half" is the supplement.

The Author cites Gautama's text as an authority for the rule "by a *Kṣatriya* of a *Vaiśya* or a *Śūdra*": *Brāhmaṇarājanyavaditi*

(p. 129. l. 7.) similar as in the case of a *Brāhmaṇa* and a *Kṣatriya* (respectively) (p. 347. l. 10.).

5 The Author quotes the text of *Manu* for (the passage) "In an abuse by a *Vaiśya* of a *Śūdra*". *Viṣṭūdrayorewameveti* (p. 129. l. 8). a *Vaiśya* and a *Śūdra* in the same manner &c. (p. 347. l. 12.)

10 By the text "By true, untrue, or ironical statements" having stated the penalty for a *Niṣṭhura* abuse, and having premised a penalty for an *aślila* (indecent) abuse, in the manner of the 'lion's gaze' treats of the *Niṣṭhura* abuse, as the Author says *Punarniṣṭhurākṣhepamiti* (p. 129. l. 10). again a *Niṣṭhura* &c.

### Yājñavalkya Verse 208.

The Author points out by an illustration, a threatening by words : *Tava hāhumiti* (p. 129. l. 17.) *Your arm* &c. (p. 347. l. 19.)

15

### Yājñavalkya Verse 210.

20 *Varṇināmākṣhepa iti* (p. 129. l. 25.) in an abuse of men belonging to the *varṇas* &c. (p. 348. l. 10.). The term *Varṇi* is used to indicate by implication the *Mūrdhavaṣikta* and other *Jātis*. For among the *Jātis* also *inter se* for abuses involving degradation, the middle *sāhasa*, and for an abuse involving the commission of a secondary sin, the lowest *sāhasa*; this is the result. For an abuse mutually between the *Varṇas* and *Jātis* also the same is the punishment as mentioned before. Even among *Varṇis* themselves without regard to the lower or higher, the punish-  
25 ments of the middle *sāhasa* and the like having been laid down elsewhere, also would happen to be the same, taking that as a standard.

### Yājñavalkya Verse 211.

30 PAGE 91\*. *Ye punarbrāhmaṇamūrdhāvaṣikṭātādīnāmiti* (p. 130. l. 1.) Moreover of the *Brāhmaṇa*, the *Mūrdhāvaṣikta* and others &c. (p. 348. l. 24.). The association of *Brāhmaṇas*, an association of *Mūrdhāvaṣiktas*, and also an association of *Kṣatriyas*, thus the word association goes with each distributively or collectively. In  
35 either case the same is the punishment.

Here ends the title of Law called the Abusive Language.

## Chapter XIX. ASSAULT.

Having mentioned the nature of Assault in pursuance of the text of Nârada, in pursuance of the same text also, the Author mentions also the varieties thereof : *Tasya twawagoraṇâdirûpakaraṇabhedeneti* (p. 130. l. 11). *Distinguished by the raising of the hand &c.* (p. 349. l. 16-17). i. e. by reason of the different causes in the form of raising the hand &c. *Drawyarûpakarmatralwidhyâditi* (p. 130. l. 16.) *by regard to the three-fold acts regarding articles &c.* (p. 349. l. 18.) i. e. by reason of the three-fold means causing the act.

This is what is (intended to be) said. An assault means disfiguring the body. There in this disfiguring of the body there are three (kinds of) acts viz. raising a hand, making sudden attack, and causing a wound ; and thus according to the difference in the act is its three-fold division. The body in which the disfigurement is caused is the object of the Act. Therefore, by (regard to) the lowest, middling or the best character of that object of the Act also, is the division three-fold. *Tasyâpi dṛṣṭam<sup>1</sup> tralvidhyamiti* (p. 130. l. 12.) *There are three species of that also* (p. 349. l. 19.) Of that i. e. of Assault, according to the three causes viz. raising of the hand, striking unexpectedly and causing a wound, and by the stealing of the lowest, middling or best articles, in the respective order of the lowest, middling and best is the three-fold division ; thus is the order of words. In the raising of the hand and other acts, the lowest and the rest character should be determined in the order of their enumeration.

It may be asked, indeed, when on account of the difference of the means of attack, as also of the subject of the attack, a six-fold division is established, the statement about the three-fold<sup>2</sup> division is not proper, so the Author says : *Triṇyewa sāhasâniti* (p. 130. l. 13.) *are only the three Sâhasas &c.* (p. 349. l. 23.). There in (the case of) of this description for extirpating the thorny weeds i. e. in administering punishment of the guilty, that the punishment should be according to the guilt, the *Sâhasas* in the form of *Assaults* viz. the lowest kind of Assault, the middle kind of assault and the highest kind of assault, thus three (kinds) only are ruled. The meaning is this : Even if there be a difference in the object or the means, on account of their

1 In *Mitākṣara* the reading is different viz. *दृश्येवार्थः*.

2 There is a mistake in the print here on page 91. l. 14. for *सिद्धोक्तिरुपपन्नं* read *सिद्धोक्तिः*.

characterisation as the lowest, the middling or the highest, the division is three-fold only.

Thus having stated the nature<sup>1</sup> of Assault together with its varieties, the Author mentions the common characteristics of the Abuse and the Assault: Tathā wāgdaṇḍapârushyayorubhayoriti (p. 130. l. 16.) *Moreover, when abuse or assault &c. (p. 349. l. 27.).* Baddhe vairânusandhâturiti (p. 130. l. 17.) *after the quarrel has commenced, he who follows up &c. (p. 349. l. 31.).* i. e. he who carries the memory of a past quarrel.

Vidhiḥ panchavidhastûkta iti (p. 30. l. 26.). *A five-fold rule of procedure has been laid down &c. (p. 350. l. 5.)* i. e. of these two, i. e. of the (offences of) Abuse and Assault, five-fold i. e. of five varieties, is the procedural law laid down.

The Author points out these five rules: Pârushye satityâdinâ (p. 130. l. 21.). (Even) when under an excitement an altercation has commenced, of the two who are excited, he who forbears, is respected. This is the order of words.

Dwayorâpannayoriti (p. 130. l. 23.) *when both parties are implicated &c. (p. 350. l. 16.).* Equally implicated i. e. involved in a quarrel, of the two, he, moreover, who follows up the attack, that alone shall receive punishment, whether he first started<sup>2</sup> or afterwards retaliated. This is the meaning.

Śwapâkaśhandheti (p. 130. l. 25.). *If a swapâka śhandha &c. (p. 350. l. 17.).* The meaning of this: In the case of persons beginning with *swapâka* and ending with the *dâsas* immediate corporal punishment is alone the rule. In whose case? In regard to the (offences against) the teacher, the preceptor and the *antaga*<sup>3</sup>, when the limit has been transgressed. He who resorts to the end i. e. the last order is an *antaga* i. e. *yati*<sup>4</sup>. The word *cha* 'and' indicates a different order. Therefore, the order of words comes to be thus: in the case of

1 On p. 91. read line 18 thus. एव वृद्धपाह्वयस्त्वत्तु नमः ॥ १८ ॥ &c.

2 On p. 71 l. 23. for प्रथमवृत्तं, read प्रथमवृत्तं वा ।

3 It appears there is a difference in the readings of the *Mittaksharā* of this passage. The reading adopted in these series is श्वपकाश्वपत्तु च (see. *Mit.* p. 13. l. 26. and *Transl.* p. 350. l. 19.) The *Bālabhāṭṭi* has also the same reading. The reading in the *Subodhīnī*, as in some editions of the *Mittaksharā* also is श्वपकाश्वपत्तु च. There the word *अन्त* has been explained in two ways.

4 For यति: read यति:

those who maintain themselves by killing, in the case of *śwapāka* and others and in the case of an elephant-driver, a *vrāṭya* or a slave, immediate corporal punishment alone is the rule; in regard to the teacher, preceptor and the *antaḡa*, while there is a transgression of limit.

Or there is an entirely different comment. He who goes to the end i. e. death, is an *antaḡa*; the *antaḡa* of the teacher, and the preceptor is one who causes the death of the teacher and the preceptor i. e. their enemy. For these, the *antaḡas* of the teacher and the preceptor i. e. the enemies of the preceptor and the teacher. 5

From that, this is the order. In the case of persons beginning with the *śwapāka* and ending with the enemies of the teacher and the preceptor immediate corporal punishment is alone the rule. In what (conditions)? When they transgress their limit. The word 'they' is to be obtained by a consideration of the import of the next verse. 10

Now the Author introduces the original verse: *Evambhūteṭi* (p. 131. l. 1.) *thus described. &c.* (p. 350. l. 28.) 15

### Yājñavalkya Verse 212.

PAGE 92\* *Kāraṇaprayojaneṭi* (p. 131. l. 5.) *by regard to the relation of causes &c.* (p. 351. l. 8) i. e. containing a consideration of the cause, the occasion &c. The context is with each. 20

*Sādhana viśeṣaṇeṭi* (p. 131. l. 7) *particular means &c.* (p. 351. l. 12.) i. e. the special means such as ashes and the like to be presently mentioned.

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### Yājñavalkya Verse 213.

*Karṇaviṭṭūṣhiketeṭi* (p. 131. l. 13.) *ear-wax, rheum of the eyes &c.* p. 351. l. 24.). Ear-wax i. e. the excreta in the ear. Rheum of the eyes i. e. the excreta of the eyes.

The Author expounds the portion in the original text viz. "double that" &c. *Tata\** iii. (p. 131. l. 14.). Than that a double line, is the order of words. Anticipating an inquiry, than i. e. than which? the Author says *Pārvādaśapaṇḍiteṭi* (p. 131. l. 14.). *Mentioned before viz. ten* 30

1 They . the stress here is on the expression *एतत्* the force of the locative absolute being, that when they are engaged in the act &c.

2 There is a mistake in the print of the *M* tāksharā at 131. l. 1. for *एतद्* &c. read *एतद्* &c.



5 (the body).

Purīṣhādīparśana itī (p. 131, l. 15.) *in an assault by feces &c.* (p. 351:1. 29.) i. e. when feces or the like have been made to touch (the body).

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The meaning of this : In an assault upon another's limbs with vomit or the like, a four-fold penalty should be imposed i. e. by relation to ten *paṇas* four times would be forty *paṇas*. Kāyamadhye (p. 131. l. 16.) in the middle extremity of the body (p. 351. l. 32.) i. e. above the navel and below the mouth, for an assault with vomit &c. the penalty shall be six times. By deduction, the four-fold penalty mentioned before should be understood to be for an assault (on the body) below the navel. Six times is sixty *paṇas* ; eight times, eighty *paṇas*.

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The Author expounds the portion "Thus against one of an equal class": *Evambhûtapûrwokta iti* (p. 131. l. 18.) *Thus mentioned before &c.* (p. 352. l. 1.) In all cases of others' wives. In the case of one superior in learning and conduct than oneself for an assault with ashes &c. twice ten *panas* i. e. twenty *panas*, while for an attack with an impurity &c. twice twenty *panas* i. e. forty *panas* shall be the penalty. So the Author says, *Parabhâryâsu châviśeṣheṇeti* (p. 131. l. 18.) *In the case of wives of others...without differentiation &c.* (p. 352. l. 3.) i. e. without distinction as to whether of the same *varṇa* or of a superior *varṇa* or an inferior *varṇa*. *Panchapaṇo daśapaṇascheti* (p. 131. l. 20.) *five panas or ten panas &c.* (p. 352. l. 9.) i. e. for an assault with ashes touching the body.

Yājñavalkya Verse 215.

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Śreyāṃsamīti (p. 131. l. 22.) one of a higher class (p. 352. l. 27.) of the best caste i. e. of the twice-born class. The Author extends the aforesaid rule elsewhere also: Vaiśyasyāpīti (p. 131. l. 29.) or of a Vaiśya even (p. 351. l. 27.). In the case of a vaiśya also being after a Kshatriya, and thus being inferior, born lower and relatively to him

1 पूर्वदिशो नवयो वा, Pāṇini VII. 1.16. The suffixes स्मान् and स्मिन् are optionally substituted for the Ablative and the Locative endings, after पूर्व and eight that follow it. Vide Pāṇini I. I. 34. पूर्वदिशस्त्वदिशोऽष्टावपरायां स्मन्स्मादायाम्नादात्. Thus पूर्व, पर, अवर, दक्षिण, उत्तर, अपर, अर्ध, इह and अन्यर will here optionally पूर्वन् or पूर्वस्मान्...उत्तरात् or उत्तरस्मान्.....अन्यन् or अन्यस्मात्; have so also पूर्व or पूर्वस्मिन्...उत्तरात् or उत्तरस्मिन्...अन्ये or अन्यस्मिन्.

a *Kshatriya* being upper and therefore superior, by a parity of the rule regarding a *Sūdra*, here also is this very punishment of the lopping off of a limb. This is the meaning.

Indeed, what would be the punishment for an offence of throwing ashes, mud, dust &c. ending with the spit by a member of a lower towards one of a superior order? Anticipating this question, the Author says: *Bhasmādisamsparsane tu iti* (p. 132. l. 20.). *In cases of assaults by means of ashes &c.* (p. 353. l. 7.). This is the import: Where for an assault with ashes, mud, and dust, in regard to one of the same *varṇa* the penalty is ten *paṇas*, there in an assault by a *Kshatriya* towards a *Brāhmaṇa* being an offence against a higher class, a two-fold i. e. twenty *paṇas* is the punishment. With the same means when committed by a *Vaiya* in regard to a *Brāhmaṇa*, three-fold i. e. thirty *paṇas* is the punishment. In the case of an assault by means of an impurity and the like and committed by a *Kshatriya* against a *Brāhmaṇa* twice that of twenty *paṇas* the punishment mentioned there, i. e. forty *paṇas* would be the punishment, and for an assault by a *Vaiya* by the same means against a *Brāhmaṇa* thrice twenty *paṇas* i. e. sixty *paṇas* is the punishment.

### Yājñavalkya Verse 216.

*Parasparawadhârthamiti* (p. 132. l. 9.) *with the object of striking each other &c.* (p. 353. l. 24.) i. e. In the case of all the *varṇas* when lifting a weapon for striking each other.

### Yājñavalkya Verse 218.

*Twagbhedakaḥ śataṃ daḍyât iti* (p. 132. l. 21. *He who breaks the skin shall be fined a hundred &c.* (p. 354 l. 20). He who breaks the skin and also exhibits blood, alone is to be punished with a hundred, and not one who merely breaks the skin, since the word *cha* 'and' indicates cumulation.

If it be argued that a fine of sixty-four *paṇas* has been mentioned by Yājñavalkya at the sight of blood while a hundred has been mentioned by Manu, so there is a mutual conflict, the answer is no, it is not so. For a wound to another on a vital part exhibiting blood, a hundred *paṇas* is the punishment; elsewhere sixty-four; thus it is to be distinguished.

### Yājñavalkya Verse 219.

It may be said, indeed, as compared with the cutting off of an ear, nose, and the like, the punishment for the

breaking of a hand, foot or tooth is small, and a uniform punishment of the middle *sāhasa* for all would be improper, so the Author says: *Anubandhādineti* (p. 132. l. 26.) *by regard to the result of the act &c.* (p. 354. l. 30.) *Anubandha* means resulting of an injury vide *Amara*<sup>1</sup> 5 "when injury is caused, it is called *Anubandha*". By the term *Ādi*<sup>2</sup> "and the like" is included facility in regard to movements. In the case of the cutting off of the ear or nose and the (consequent) appearance of scars an aggravation of the offence is visibly established. In the case of these being the limbs directly of the body, by a breaking of these, there 10 would be a difficulty in ordinary movements, and the requirements of the body would not be had, and thus there would be an aggravated offence. In the case of the breaking of the teeth, there would be difficulty in eating and thereby indirectly a shortening of life and thus the aggravation of the offence. Thus by regard to the results produced the 15 similarity between the several causes viz. the breaking of a hand, a foot or tooth should be understood. This is the meaning.

### Yājñavalkya Verse 221.

Thus having stated the penalty in regard to offences by 20 members of the same *Varṇas* the Author applies that punishment to offences between higher and lower *Varṇas* similarly as has been laid down in the case of Abuse. *Prātilomyeti* (p. 133 l. 5.) *of inferior classes &c.* (p. 353. l. 24.). The distinction is that in an offence against a superior there would be an enhancement of the penalty, while in an 25 offence against a lower order there would be a reduction in the penalty.

It may be said that while commenting upon the verse<sup>3</sup> "Which causes injury to a *Vipra* must be cut off" this sense has been stated by the clause "In cases of assaults by means of ashes &c"; and the 30 same is being stated here again, thus there is a repetition. The answer is, no, not so. For special causes of offences against the higher class by means of ashes &c. in connection with that very offence have been stated on the occasion of the penalty for offences against the higher class. While here, the rule for determining the punishment is entirely 35 the same as stated in connection with the offence of Abuse in regard

1 III. 3-28.

2 I. e. in the *Mītāksharā*, it is stated that the point of similarity is in results &c. of the act. Whatever retards, impedes or otherwise affects the facility as to movements &c. is responsible as a cause of the incapacity.

3 Ysfn. II. 215.

4 *Mītāksharā* p. 353. l. 7.

to offences both against the higher and the lower *Varnas* being mentioned for the elucidation of the beginner; thus there is no fault of repetition.

### Yājñavalkya Verse 223.

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The text next stated has an appropriate context. With a view to indicate this, the Author says *Paragâtṛābhidroha iti* (p. 133 l. 15) *for assaults upon the limbs of others &c.* (p. 356. l. 13). This is the meaning: Having stated the penalty for offences against internal possessions such as hand, foot &c., in course of the context, the punishment is being stated for attacks against external possessions such as house &c.

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### Yājñavalkya Verse 225.

The Author anticipates an objection in regard to the interpretation stated before and refutes it: *Kathamiti chediti* (p. 124. l. 1.). *If it be asked how? &c.* (p. 357 l. 25). With a view to give an effective reply, the Author follows the line of what has been established: *Aparādha-gurutwāditi* (p. 134 l. 1). *By regard to the heinousness of the offence. &c.* (p. 357. l. 26.). Then what? So the Author says: *Tatra cha āsruteti* (p. 134. l. 2.) *there, which have not been specifically mentioned &c.* (p. 357. l. 29.)

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This is what is (intended to be) said: By the text "beginning with the *panas* and upwards" the double has been pronounced. Next to the double number which has been stated while determining the higher number, the question would be whether it should be by assuming the number three, not mentioned before, and having an attribute or by assuming the number four which could be had by a recurrence of the number two mentioned before. Thus, moreover, by assuming the higher figure to the three to be the next higher there could be a figure not mentioned before, and also one having an attribute<sup>1</sup> and thus a higher one, while by assuming a higher figure by accepting four, there would be a repetition of what has been stated before and which itself is the attribute, and thus a lower one. Moreover, those conversent with the Rules of Law, consider that the assumption of the attribute is better than that of the possessor of an attribute. And, therefore, it is that the rule containing a repetition of the double already mentioned is better.

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1 There is a mistake in the print on p. 91. l. 9. for दधेष्टाविनियोगार्हत्वं read न दधेष्टविनियोगार्हत्वं.

After mentioning the special rules stated in Another Smṛti the Author resumes the context : Tatra paradrawyâpaharaṇarūpa iti ( p. 135. l. 21.) in the form of deprivation of another's property (p. 361. l. 36.). Yaḥ punaḥ sâhasaṅkṛtweti (l. 23.) He, however, who having committed a sâhasa &c. (p. 362. l. 5.). The meaning is that after a denial has been proved by witnesses &c. he deserves a fourfold punishment, and not (as for) a mere denial.

It may be said, indeed, for offences like the lowest sâhasa and the like, hundred paṇas and the like punishments have been prescribed before. Here a punishment either double or four-fold of the original is being laid down. Therefore on account of this mutual contradiction does it lack authoritativeness, or in the alternative, by accepting its authoritativeness as an alternative, is an option—which is vitiated by eight faults—to be resorted to? Anticipating this, the Author says : Etasmâdeveti (l. 24.) from this very &c. (p. 362. l. 8.). This is the import: There is neither authoritativeness nor an option. But on the other hand, a particular rule having the capacity of qualifying a general one, and the rule as to the double or four-fold having been laid down in a special case of offence of a forcible deprivation, by a special clause, the clause laying down a general rule is qualified.

### Yājñavalkya Verse 231.

Anubandhâtisâyâditi (p. 135. l. 231.) on account of the aggravation of the offence &c. (p. 362. l. 23). i. e. by reason of the excess of force, the guilt would be aggravated.

### Yājñavalkya Verse 232.

ARGHYÂKROŚETI. (p. 136. l. 1.) (who) abuses the venerable &c. (p. 362. l. 26.) To a venerable person, one who offers abuse or shows disobedience. One who does these two acts is one who does it. Thus is the compound (to be understood.)

Te sarve panchâśaditi (p. 136. l. 8.) all these fifty &c (p. 363. l. 12.) The meaning is that all shall be severally punished with a fine of fifty paṇas each. The rest is easy to understand.

Thus ends the Chapter on Sâhasa.

Now an Incidental Chapter intituled, the Rules of Punishment for the washermen and like others.

Tatsadṛśāparādheṣhwiti (p. 136. l. 27.) for similar offences &c. (p. 364. l. 164). Offences equal (in gravity) as a *sāhasa*, being committed by the washers of clothes such as wearing<sup>1</sup> the clothes and like others. In regard to these offences, a punishment for the perpetrators thereof is being laid down. This is the meaning.

### Yājñavalkya Verse 238.

Awakrayancheti (p. 137. l. 2.) or hires out &c. (p. 364. l. 22). Or who hires out—is the connection with what follows. The Author indicates the nature itself of a hiring out : Etāvatkālamiti (p. 137. l. 2). For such a period &c. (p. 364. l. 23). i. e. in such a manner that it becomes a thing let out.

The Author expounds the collection of texts of Nārada viz : "An eighth part of its value &c." : Aṣṭapaṇakṛitasetyādina (l. 10). purchased for eight *panas* &c. (p. 365. l. 11.) Without an interval of time it being impossible to mention reduction below an eighth and the like, the mention of eight *panas* as the price is only with a view to indicate a direction. Aṣṭamabhāgonam minus an eighth part i. e. seven *panas* Pādonamiti less by a quarter i. e. reduced by a fourth part.

The Author expounds the portion "After the depreciation of a half" : Tataḥparam pratinirgejanamiti (p. 137. l. 12.) Thereafter.... for each wash &c. (p. 365. l. 15-17). The meaning is this : Of a cloth purchased for eight *panas*, on the fourth wash, if lost, a reduction by half of the original price i. e. of four *panas*—occurs. Of one lost after the fifth wash or subsequently a reduction more than a half takes place. In such a position, on it being lost at the fifth wash, the price would be less by a quarter of the residual price of four *panas* i. e. three *panas*. At the sixth wash, moreover, on it being lost, a quarter less of the residual rule for three *panas*, and thus by as much period the cloth gets old, by so much should the price be paid reduced by a fourth part.

Tatteredness occurs when the ends get thinned, so the Author expounds the portion "In the case of a tattered cloth, there is no rule"; Jirṇāsya punariti (p. 137 l. 13.) of a tattered cloth, moreover &c. (p. 365. l. 18.) This is the meaning : In the case of the loss of a tattered cloth, the wish of the arbitrators alone is the standard for determining

1 The other reading is পরে পরে বস্ত্র —wearing others' clothes and like others.

the price to be paid, there would be no application of the text as stated before, nor shall one's own option have a scope.

- 5 Above has been stated that the Author mentions a penalty for washermen and others. The Author points out the punishments indicated by the term *Ādi*—"and others," by fifteen verses commencing with "In a dispute a father and son" and ending with "Adding to the cost of the commodity".

### Yājñavalkya Verse 239.

- 10 The Author desires to indicate that one who, although he is competent to prevent a quarrel, does not stop a quarrel at such a place, but undertakes to give testimony, shall also be punished-so he says :  
 15 *Pitāputrayoriti* (p. 137 l. 16) *Between a father and a son &c.* (p. 365 l. 24) *Dampatyādīṣṭhapīti* (l. 18). *In the case of a husband and wife, or like others also &c.* (p. 365 l. 30) i. e. by the term *Ādi* "like others" are included the preceptor and the pupil and others following.

### Yājñavalkya Verse 242.

- 20 *Tiryagādīṣṭhu Mūtyaviśeṣheṇeti* (p. 138 l. 3). *In the cases of lower animals &c. by regard to the value &c.* (p. 367 l. 12). The meaning is that in the case of lower animals, by regard to the particular value, in the case of men, by regard to the particular *varṇa* such as that of a *Brāhmaṇa* and the like, and in the case of royal personages by regard to the particular degree of contiguity to the king, the smallness or  
 25 heaviness of penalty is to be determined.

### Yājñavalkya Verse 243.

- 30 The Author states the meaning of the expression "before the decision (in his case) is arrived at": *Anirvṛttawyahāramiti* (p. 138 l. 7) *before the trial was concluded* (p. 367 l. 22).

### Yājñavalkya Verse 244.

- PAGE 96\*  
 35 If the commodity abstracted by a false weight be more or less than an eighth part, an increase in the amount of the fine or decrease over two hundred should be determined, so the

1 i. e. from verse 233 to 253.

2 See Bālabhāṭṭi which makes this further clear: *यदिना तु नवद्वयद्वयं नावद्वयं कर्तव्यं वा च निवर्तनीयमिति ।*



Author says. *Apaṇhatasya punariti* (l. 12.) of the portion abstracted &c. (p. 368. l. 2).

### Yājñavalkya Verse 246.

*Vikreyasyapādītasādrśyasyeti* (l. 25) commodity offered for sale... 5  
which is made to resemble &c. (p. 369 ll. 1-3). This is the import : i. e. eight times the amount of the price of the commodity (offered) for sale, such as e. g. a crystal which was made to wear the appearance and lustre of a coral by the imparting of excessive lustre.

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### Yājñavalkya Verse 247-248.

The Author expounds the verse "For.....the fraction of a...*pañas* fifty &c" *Kṛtrimakastūrīkāderityādinā* (p. 139 l. 4). The actual price of the counterfeited musk or other article &c. (p. 369. ll. 17-18).

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### Yājñavalkya Verse 251.

*Pancharātre pancharāta iti* (p. 139 l. 22), once in (every) five nights &c. (p. 370 l. 22).

The meaning of this: The king should fix in his presence the prices of the above mentioned commodities with fluctuating values at the interval of five days each, while of steady values at the lapse of a fortnight each. Here by the repetition it should not be supposed that after ten days or after a month is over the prices are to be fixed, but moreover, after an interval of five nights, after a fort-night &c. Thus by its jointly and necessarily being required to be done, it indicates its permanence<sup>1</sup>, after the manner of the maxim "every Vernal season the *jyotiṣkṛtoma* (should be performed)". 20 25

### Yājñavalkya Verse 252.

It has been stated that the price should be fixed by the king ; 30  
and that by the tradesmen also, on a commodity available in one's country, a profit of five *pañas* for a hundred *pañas*, while for one obtained from another country a profit of ten *pañas* should be taken. In this state of things if it be asked in what manner

<sup>1</sup> See Pāpini V. 3-14. इतिरेवोक्ति इदमन्ते ।

should the king fix the price? In the text stated above, the mode of fixing the price of a commodity obtained from another country being intended to be stated, the method of determining the price, fixed under that rule the Author points out in the case of commodities obtained in one's own country : Evancha yathârgha itl (p. 139 l. 29)  
 5 And thus...on the regulated price &c. (p. 371 l. 10).

### Yājñavalkya Verse 253.

10 Panyasyopari samsthâpyeti (p. 140 l. 2) Adding.....to the cost of the commodity &c. (p. 371 l. 15). It may be said, indeed, here the method of determining the price in general is contemplated, therefore the mentioning of another method of determining the price of a foreign commodity is improper, the answer is, no, not so. By stating the reason viz. "charges incidental to the commodity" the other kind is  
 15 inferrable. This is the import. Generally, incidental charges being possible only in a commodity while it is being brought from a foreign country, it is properly said that the reference is to that.

Thus ends the Incidental chapter intituled  
 the Rules of Punishment for Washermen and like others.

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## Chapter XXII.

### NON-DELIVERY AFTER SALE.

25 Charâcharabhedeneti (p. 140 l. 10) according as they are movable or immovable &c. (p. 372 ll. 3-4). Chara means movable, and achara, immovable. Shaḍvidhastasya tu budhairiti (14 l. 11) of that...six-fold by the learned &c. (p. 372 l. 7). "Of that" i.e. of the commodity. "By the learned" i. e. by Manu and others. Of delivery, as also of non-delivery, the set of rules, series of regulations, i. e. the mode of performance, has  
 30 been stated to be of six kinds. This is its meaning. "The form rūpataḥ" is under the rule that the suffix त्त (tas) is used in all cases, and therefore it is used in an instrumental sense i. e. by the form. That Instrumental also is used in an implication; with this view the Author says, Rūpataḥ panyâṅganâditi (p. 140 l. 14). 'According to its beauty such as a prostitute &c. (p. 372 l. 13).

Now the Author introduces the original text : Ityetaḥ (l. 15). Thus these &c.

# Yājñavalkya Verse 254.

PAGE 97\* In the expression "shall be compelled to deliver together with interest", here, the increase is possible in four ways. It is thus : when, as compared with the time of the sale at a later time the commodity bears a less, equal, or an inflated price. This 5  
in the case when the price is less e. g. the commodity having been purchased at the rate of five *panas*, at another time it is obtainable<sup>1A</sup> at four, the price being less, there is an increase in the commodity. At such a time, the commodity should be caused to be delivered to the purchaser at four *panas* only, thus this is one of an increase or interest. 10  
In such a case popularly it is called a commodity with a less price.

As compared with the time of the purchase, when the price is equal an increase may occur in two ways. When having purchased the commodity in the town &c. at the market place or the like, one sells it at another place such as in his house or the like, whatever profit occurs, 15  
that would be one kind of increase. Or, the money with which the commodity was purchased, that very money may carry an interest against time under the text<sup>2</sup> : "An eightieth part (of the principal) is the interest (allowed) every month when the debt is (secured) by a pledge. In other cases, it may be two, three, four, a five per cent, respectively, 20  
according to the order and class (of the debtor)"; that is another increase.

While in the case of a larger price, when a commodity had been purchased at five *panas*, in course of time, was obtainable for six or ten; then in the case of clothes, houses and others, the enjoyment thereof 25  
in the form of wearing, occupation and the like, that enjoyment itself is profit and is (an instance of) another increase.

This is what is (intended to be) said: When the price of the commodity becomes less, there is one increase, is the first kind. The price being equal in the same region where the sale is made at a place 30  
other than that of the purchase, and a profit is made, that is the second. When the amount of the price of the commodity is advanced as a loan, an increase every month is the third. In the case of an inflation of the price, the rise of the commodity is itself the fourth. In all these four cases the commodity should be caused to be delivered together 35  
with an increase according to the wish of the purchaser under the text

1 A अत्र is a better and correct reading.

2 of Yājñavalkya II. 37.

mentioning that "when after taking the price, delivery is not made to the purchaser" &c.

The Author mentions, presently, the first case : *Tachcha paṇyam yadityādīnā* (p. 140 l. 19) *and if that merchandise &c.* (p. 372 l. 26).

5 The meaning is this : Having sold at five *paṇas*, and even accepting the price, if the seller does not deliver that commodity even when requested by the purchaser, and in course of time it is available for *four*, or even for *one*, then having given to the purchaser at the (altered) price of the later time, the balance of the price received before also should be  
10 paid over by the seller.

The Author states the second case : *Yadā mulyarhāsakṛta iti* (l. 21) *when, on account of a reduction in the price &c.* This is what is (intended to be) said: At the time of one's purchase, as well as at another time if the rate of the price be the same, the commodity should be  
15 delivered together with the profit which accrues by purchasing from the market or other place and selling at a house &c.

The Author mentions the third alternative *Dwikam trikamityād-iti* (p. 2 l. 23) *two, three, or the like (per hundred) &c.* (p. 375 l. 1).

It has been stated that in the case of a fall or evenness in the price the commodity should be restored together with this increase.  
20 There for both these alternatives also the Author cites a text of *Nārada* in support : *Arghascheti* (l. 24) *If the market value &c.* (l. 3). The meaning of this : By the word "If" is indicated another alternative. When the price is lower i. e. the price of the commodity falls down and the commodity is deflected in price, then the commodity should be  
25 delivered at the lowered price together with interest. If the price is not lowered, and there is evenness of the price then even he should pay with interest. Here the delivery with interest is to be observed in the same manner as mentioned before. This rule is only in regard to local traders residing in the same country. Of those who travel  
30 abroad, the foreign profit should be determined in the manner which will be stated hereafter.

The Author mentions the fourth rule : *Yadā twarghamahatweneti* (l. 26) *when however on account of a rise in the price &c.* (p. 373 l. 8). This is the import : If a commodity which, at the time of the sale was available at five *paṇas* is after a lapse of time sold at six or ten, then after causing the purchaser to be paid the price (prevailing) at the time of the sale, he should also be paid the price for the enjoyment of it  
35 for the period commencing from the time of the sale up to the time of

delivery. Not the delivery of the enjoyment itself, as that is not possible in the case of all commodities : Jangamasya vikriyâphalamiti (l. 28) of the movable...the profits arising from it &c. (p. 373 l. 15). 'Of movables' i.e. of a *Dâsi* or the like. 'Profits' i.e. the price of service &c. The Author states the meaning of the word "*kṣhaya*" in the text of Nârada : Vikreturupabhogha iti (l. 28.) Possession by the seller &c. (p. 373 l. 16). There the reason is "from the point of view of the buyer" ; since it has been stated in "As he did not deliver (it) after it had been sold (by him)". The meaning is that here in this text, Nârada having once declared that by demolishing a wall there would be a loss to the seller, stating again that he should be compelled to pay the loss would be tautologous. The Author expounds the portion of the original text viz. "Or the foreign profit to one who has come from a foreign country" : Yadâtwasâviti (p. 140 l. 31) when however such a &c. (p. 373 l. 23). Anuṣayâbhâva iti (p. 141 l. 2). In the absence of a rescission &c. (l. 29). By Rescission is to be understood that described by Manu<sup>1</sup> viz. "Sold at an improper price &c." "He whose rescission shall take place, that man within ten days shall deliver that commodity and take back &c." is the remainder of the verse.

### Yājñavalkya Verse 255.

Tatkreturevâsau hâniriti (p. 141 l. 8). The loss will be on its purchaser alone &c. (p. 374 l. 10). i.e. of that i. c. of the commodity, the purchaser.

### Yājñavalkya Verse 256.

In the text "the loss shall be of the seller alone" desiring to indicate the force of the word 'alone', the Author says : Atonyadaduṣṭamiti (l. 12). Therefore another unblemished commodity &c. (l. 18).

### Yājñavalkya Verse 257.

The Author points out the subject matter of the rule as to the penalty, stated in the passage<sup>2</sup> "Having finished a topic which in-

<sup>1</sup> Ch. VIII. 222.

<sup>2</sup> See *Mitākaharā* text p. 140 l. 8. Tr. p. 371. l. 24.

cidentally arose" : Sarvaschâyam vldhriti (l. 21). *The whole of this law &c.* (p. 375 l. 1). This is the import : i. e. the meaning is that it applies to where after receiving the price of a commodity as settled by mutual agreement, the seller delivers the commodity to the purchaser. Niyamakârîṇaḥ samayâdṛta iti (l. 22). *excepting such special agreement as may have been entered into &c.* (p. 375 ll. 4-5). The meaning is that where without paying the price an agreement has been reached that if such be the price of this commodity it shall be yours, not mine, that is called a special agreement (*samayah*), without that, there is no wrong in receding from a sale: Na vikreturavikraya iti (l. 23) *no rescission is to be imputed to the vendor* (p. 375 l. 9).

That is, as has been stated in the number of texts commencing<sup>1</sup> with "He who having received the price of a thing &c." and ending with "When it had already been sold to another". Kritânusâyaswarûpamiti (l. 24). *rescission of a purchase &c.* (p. 375 l. 12) i. e. i: should be understood as the one expounded before after the chapter on resumption of profits.

### Yājñavalkya Verse 258.

Parikṣhitakritapaṇyânâmiti (l. 27.) i. e. *commodities purchased upon inspection &c.* This is the import: Having purchased a commodity which has no blemish, at four *panas*, no rescission should be made by a purchaser who during the interval for a rescission laid down in law does not know of an increase in the price e. g. at three *panas* or the like ; similarly a rescission must not be made by the seller also who does not know of an appreciation in the price e. g. at five *panas* or the like.

Paṇyawaigunyanibandhaneti (p. 142. l. 1) *on account of a defect in the commodity &c.* (p. 376. l. 6). i. e. by reason of a blemish in the commodity. Ityâdinâ darśita iti (l. 1.) *has been indicated &c.* (l. 5.) The meaning is that the rule has been set out in the Chapter on the Rescission of a Purchase.

It has been stated by the affirmative and the negative method of reasoning that a rescission may be made at the knowledge of an increase or decrease in the price as compared with the price at the time of the purchase and that it must not be made without such knowledge.

In support of these (two), the Author points out a net inference :  
Tadanayā wācheyuktyeti (1. 2). *Therefore from this text &c.* (1. 6.)

The Author points<sup>1</sup> out another reasoning in the<sup>2</sup> form of an illustration : Yathā paṇyaparikṣheti (1. 2) *As.....the testing a commodity etc.* (1. 9.) If under the rule<sup>3</sup> regarding inspection, viz "The purchaser shall examine the article &c." while an examination is being made, faults exist then a rescission shall occur, and thus faults are a cause for a rescission. This is the meaning.

Thus ends the Chapter called *Non-delivery after Sale.*

## Chapter XXIII.

### TRADING BY PARTNERSHIP.

The word "of traders" in the original text, is indicative of others also by an extended application ; thus by the term trader are also included even actors and the like. With this object, the Author says : Ye wanikṇaṭanartakaprabhṛtayaḥ (p. 142. l. 13). *such traders, actors, dancers and others &c.* (p. 377. ll. 11-12.).

This is the meaning : When five combine together and trade or any other thing is made, there the contribution by one being five *nishkas*, by another ten, and by still another fifteen, thus pooling together the money contributions, without any express agreement, while the undertaking is carried on with a zest<sup>4</sup>, the original amount of thirty *nishkas* has become thirty-six by or on account of "profit made" he whose original was five, shall take from the profit in the form of the *nishkas* one *nishka*, he however, whose original (amount) was ten, two *nishkas*, he, moreover whose original contribution was fifteen, three *nishkas*, thus (each) should take according to the original amount of each. Similarly, if there be a loss, a reduction in the original amount is to be made.

The Author states the import of the text "or according as was determined by special agreement": Yadvā pradhānaguneti (p. 142. l.

1 A on p. 98 l 22 add दृष्टवति after हेतुतत्पदेति.

2 दृष्टनम्याजेव—Lit, under the pretext or guise of an illustration or example.

3 Manu VIII 222 cited in Mīṭākshara text p. 117 l. 17 Tr. p 318. ll. 10-15.

4 अद्वयप्रियः Lit, competition i. e. each one contributing his best skill &c.

- 15.) or...the chief qualities &c. (p. 377. l. 17.) *Pradhāna i. e.* the chief. *Gaṇa i. e.* occupying a subordinate position. For the chief a larger share for a subordinate of him, less than his, and on an assumption of still lower, still lower, and much lower shares may be determined.
- 3 This is the meaning.

### Yājñavalkya Verse 261.

- 10 *Rājato nīrūpaṇāditi* (1.25.) *determined upon by the king &c.* (p. 378. l. 7.) *i. e.* when determined by the king. *Asāvīti* (1.20.) *he &c.*; by this is indicated the king. This is the meaning : As the price was determined upon by the king, a commodity whose price is twenty *paṇas*, from that the king shall take one *paṇa*. *Rājagāmi mālyadānanīrapekṣhamīti* (1. 37). *Shall belong to the king...without regard to the payment of price &c.* (p. 378. ll. 12-14.). The connection (of words) is that without regard to the price, it shall go to the king. Of this very text, the Author points out the meaning in substance : *Tatsarvamīti* (1. 28.) *all that &c.* (1.12.)
- 15

### Yājñavalkya Verse 262.

- 20 *Te sarve paṇyādaṣṭaṭṭaguṇamīti* (p. 113. l. 2.) *all these...eight times the...commodity &c.* (p. 378. l. 23.) It should be understood that all these shall each be fined, and not collectively, as the (responsibility for the) offence is equal.

### Yājñavalkya Verse 263.

- 25 *Paṇam yānam tare dāpya iti* (1. 7.) *a ferry, a conveyance shall be made to pay a tax of a paṇa &c.* (p. 379. ll. 2-3.) The meaning of this: The sage will mention further on viz. "in conveyances etc. fully laden", therefore here an empty conveyance is (to be) taken. An empty conveyance, such as a cart or the like-for one who has to cross. A ferry, that by which one floats is a *tara*, the price for that. The ferry should be caused to be paid the charges for crossing. By the words conveyance &c. is intended the owner of the conveyance &c. If it be asked, what is that price ? the Author says : *Paṇamīti-a paṇa i. e.* as much as may amount to a *paṇa*. "A man" *i. e.* a load capable to be carried by a man. He should be made to pay half a *paṇa* as the charge for the ferry. "An unloaded man" *i. e.* a man without a vessel, should be made to pay an
- 30
- 35



eight share of a *paṇa*; carts and the like conveyances laden with merchandise; 'according to substance' i. e. by regard to the high or low (character of the) commodity. *Tāryam* i. e. charges for the ferry; should be made to pay. Empty vessels, such as empty parrot-cages and the like, shall be made to pay "a trifle" i. e. small. "Men without luggage" i. e. men such as grocers and the like without articles for sale, shall be made to pay a trifle. What has been stated before viz. "one half of a *quarier* for an unloaded man" is applicable to others than traders.

Na bhinnakārṣhāpaṇamiti "Never on a sum less than a *kārṣhāpaṇa*" &c. This is the meaning: Less than a *kārṣhāpaṇa*, i. e. short of a *kārṣhāpaṇa* i. e. to say the price of which is less than a *kārṣhāpaṇa*. For such there is no toll; nor on livelihood gained by works of art &c. "Not on the remains of stolen property" i. e. on property remaining after being taken away by thieves &c. "Nor on a sacrifice" i. e. there is no toll in regard to articles for use thereof while being taken out, nor for the man going for it.

The Author now expounds the original text *Tīryatenenetyādīnā* (l. 12.) Beginning with *that by which (a thing) is floated &c.* (p. 379. l. 15.)-and the rest.

### yājñavalkya Verse 264.

Sambhūyakârîṇāmīti (l. 19.) *those who trade in partnership &c.* (p. 380. l. 1.) i. e. In concert doing trade or a like business. Jñātayopatyaawargawatyatiriktā itī (l. 20.) i. e. *jñātis such as other than lineal descendants &c.* (l. 5.). Here the connection (of words) is not as either *sapindas* or *jñātis* other than lineal descendants—but the *sapindas* and *jñātis* other than lineal descendants. Thus the word "or" is indicative of an option in regard to that expressed by the word "have come" to be mentioned hereafter, and the line of descendants and ending with the *sapindas*. That option, however, is according to the established rule, and not according to the desire. This very meaning will be made clear in the sequel.

Indeed if the word "or" is indicative of an optional alternative, and in that case just as is the case of an optional alternative in "paddy or barley", there would be a conflict with the text "the wife, the daughters &c." which lays down a rule of order, so the Author says: *Paurwāparyānyamastwīti* (p. 143. l. 23.) *The rule as to the order &c.* (l. 10.). The meaning is this, the option is according to the rule of adjustment. And the adjustment is to be

understood as without contradicting the order of sequence in what has been demonstrated in the text "the wife, the daughters &c."

It may be said, if the right of inheritance is in the order of 'the wife and the rest', then the text "one who has gone abroad and died" &c. must not be begun, as there is no occasion for it, so the Author says: Śiṣhyasabrahmachârîti (l. 24), *the pupil, the fellow-student &c.* This is the import: Under the text, "The gotrajas, the bandhus the pupil, a fellow-student", in the absence of the Bandhus, the pupil and the fellow-student are, in order, heirs to the estate. In their absence, under the text, "In the absence even of all, the Brâhmanas get the inheritance." By saying that the Brâhmanas get the inheritance, the pupil and others demonstrated before, stand excluded, and there was a reason<sup>1</sup> for the tradesman to take. Therefore in the absence of sons and the rest, after the Bandhus, the tradesmen making up the partnership shall take.

It has been mentioned that even in the absence of the tradesmen, it should be deposited for ten years. That has been made clear by Nârada as the Author says, Tadîdamîti (l. 27). *All this &c.* (l. 15). *Eka-sya Chetsyânmarañamîti* (l. 27). *should one...die &c.* (l. 19). Of the traders carrying on business in partnership should death occur of one, that thing *i.e.* the heritage, his *dâyâdas i.e.* persons commencing with the sons and ending with the Bândhavas, in the absence of the prior each one of the posterior, shall get. In the absence of a *dâyâda*, another trader, who is able to offer the *pinḍa* and do like acts, shall get. If unable to offer the *pinḍa*, all those traders shall get. This is the meaning. In the absence of that, and the rest it is easy to understand.

### Yājñavalkya Verse 265.

The Author mentions those expressed by the word *Karmis*, "workers." : Nañanartaketî (p. 144. l. 7.) *actors, dancers &c.* (p. 1, 38 l. 13.).

The Author mentions a text of Manu laying down the distribution of *Dakṣhiṇā*, as it refers to the *Dakṣhiṇā* and its distribution as ordained in *Śruti* : Tam Śatena dikṣhayantîti (l. 10). *they shall endow it with a hundred &c.* (p. 382 l. 4). The meaning of this : As the cows were in evidence before, 'with a hundred' *i. e.* a hundred of

1 अग्रे—scope for his admission as an heir.

the cows, the head priest and others shall be endowed. When the reading is *natam śateneti*, then *Natam*<sup>1</sup>, *Natim*, *Anatim*, dependent i. e. for dependence, on the sacrificer they endow him with a hundred; since the priests at a sacrifice become dependent on the sacrificer by reason of their accepting the *dakṣhind*.

It may be argued, indeed, in this passage the acceptance of a hundred cows is prescribed by regard to the initiation, therefore, the rule is not regarding *dakṣhind*, then how can this text be taken as laying down *dakṣhind*? so the Author says: *iti wachaneneṭi* (p. 144. l. 10.) under the text &c. (p. 382. l. 3).

This is the import: As in the matter of securing satisfaction by means of the action of eating, the thing ordained is milk in the text "By means of milk should the satisfaction be secured", that milk falls in the place of cooked rice which is the means of dinner, similarly here also by the expression "they initiate" the initiation has the result of the gift of the *dakṣhind* in the form of bending. Bending means being humble, being amenable. After accepting their wages, i. e. like paid workmen by accepting the *dakṣhind*, the sacrificial priests have become dependent. In this act of *dakṣhind* in which dependence results, the hundred of cows which is ordained as a means of accomplishing the act of making the gift of a *dakṣhind* falls in the place of the *dakṣhind*, and therefore of course the hundred of cows itself becomes the *dakṣhind*, and so this text leads to the *dakṣhind*. This is what is (intended to be) said: a hundred cows have been ordained as a *dakṣhind*.

Now, with a view to expound the text of *Manu* viz. "Among all ...those entitled to a half &c.", the Author introduces it: *Ṛtvijāscheti* (l. 11). the officiating priests &c.

By the expression "these are entitled to a half of hundred cows" as compared with a hundred, fifty being a half, the same should be the manner of making a distribution; intending this and desiring it to be so expounded the Author says: *Sarveṣhāṃ bhāgaparipūrṇeti* (p. 144 l. 13) to make the division complete into entire numbers &c. (p. 382 l. 12). For a division into entire numbers (this is) an expedient; according to that, i. e. in pursuance of it; by that, arrived, i. e. obtained; and that is the half in the form of a forty-eight. Thus is the

1 These are the several modifications of forms derived from the basic root verb *wa* to bow. The meaning is that the priest who bends everything for the benefit of the person for whom the sacrifice is being performed is given a hundred as his *dakṣhind*.

compound (to be understood). The meaning is that by any other method the making of a distribution of the *dakṣhiṇā* among the half-sharers and the like is impossible. *Tasya mukhyāṃśasyeti* (l. 14) *of the principal portion &c.* Here the principal portion is in the form of forty-eight.

- 5 Na tāwadatra samaya itj (l. 18) *There is here neither a compact &c.* (p. 322 l. 21) *i. e.* there is no agreement made, that of the principal shall be a larger share, and of the others less, further less and lowest. The meaning is that it was not a combination of wealth (here) as is done in a trading partnership, like ten (being contributed by one),  
10 eight, by another, and six by still another.

- PAGE 101\* This is an *Adhikaraṇa* in the third *Pāda* of the  
tenth *Adhyāya*. "Should be equal, since it has  
not been mentioned in the *Śruti* or *Veda*" is a *Śruti* text seen  
in (connection with) the *Jyotiṣtoma* sacrifice. It has been demons-  
15 trated in a former<sup>1</sup> *adhikaraṇa*, that 'his *dakṣhiṇā* of twelve hundred consists of cows, horses, mules, donkeys, goats, sheep, paddy, barley, sesamum and beans, *i. e.* twelve hundred of cows and  
others viz. horses &c. as the *dakṣhiṇā*, and in the last *adhikaraṇa* it has  
been stated that this very *dakṣhiṇā*, should be divided. In this state  
20 of things a question arises about the division: should the division be equal, or according to the work; or the doubt arises whether it should be in pursuance of the enumeration viz., those entitled to a half &c.; There, to the position (put forth) that since a particular (share or rule) not having been stated, equal shall be the share for all the *ṛtvijs*, according to a side of the established conclusion the distribution

- 1 This is 14th *Adhikaraṇa* in the 3rd *Pāda* of the 10th *Adhyāya* and covers *Sūtras* 53-55 which run thus. सप्त स्यादधुतरात् ५३ । अपि वा कर्मदेव्यात् ५४ । अनुव्याः स्युः परिक्रमे विषमास्या विविधुतौ परिक्रमा कर्मसुपचयने दक्षिणादिदोषस्य तयाः पुद्गे ५५. This *Adhikaraṇa* deals with the subject that the division of the fee depends not upon work done, but upon a text to that effect.

The subject of the fees begins with the 11th *Adhikaraṇa* in this *Pāda* and is carried to the end of it, up to the last *Adhikaraṇa* i. e. the 21st (*Sūtras* 74-75). To facilitate a clear understanding of the present *Adhikaraṇa* it is better to note the three preceding *Adhikaraṇas*. These *Adhikaraṇas* demonstrate that in the *ज्यातिदोष* sacrifice the fee of 1200 (11) is of the cows only (12) and should be given after a division (13). The last of the *Adhikaraṇa* runs thus. तस्य दानं विधायैव प्रदानात् दूयह्वरात् (५०) परिक्रमा लोचनम् (५१) विनापि अपि दक्षिणम् (५२) सप्त स्यात् &c. (५३).

- 2 I. e. 11th *Adhikaraṇa* इत्यपि विविधौ उक्त्या तदाः प्रवचनस्य १०१२१५.

should be according to the work after the manner of what is done in popular practice. In such a position, the correct doctrine is : In the text regarding the order of initiation in the *dwādaśāha* sacrifice : "The *Adhvaryu* after initiating the master of the house, initiates the *Brahmā*, then the *Udgātṛ*, then the *Hotṛ*, then the *Pratiprasthā* after initiating him, initiates those entitled<sup>1</sup> to a half ; then the *Neṣṭā* initiating him, initiates those entitled<sup>2</sup> to a third, then the *Unneṣṭā* initiating him initiates those entitled to<sup>3</sup> a fourth, thus has been laid in the *śruti* the enumeration of the half and the rest. Therefore by reason of the same, the rule of distribution in accordance with that mentioned for the *dwādaśāha* sacrifice, is inferred for the *Jyotiṣṭoma*.

We resume the matter in hand. Relying upon the position of the objector, as also of a side of the correct conclusion the Author mentions a two-fold doubt, *Samam syād āśrutatwāditi* (l. 19). In the absence of a special rule, the share shall be equal &c. (p. 382, ll. 24-25.) As a particular rule has not been mentioned, it shall be equal. This is the import of the objector. There being the inequality of the duty of each priest at the sacrifice, it should be according to the work (done), is the view of a side of the established conclusion. The Author refutes these by a reference to the final conclusion : *Tatrochchyata ityādinā* (l. 20). Beginning with *here the answer is &c.* (l. 27).

The import is this : *Śruti* (a direct statement), *Linga* (power), *Vākya* (sentence or syntactical connexion), *Prakarana* (interdependence), *Sihāna* (place), and *Samākhyā* (name) are the means of proof which make known the meaning intended. *Samākhyā* means designation. In the *Dwādaśāha* which is a variant of the *Jyotiṣṭoma*, the term *ardhina* is only mentioned as a designation. On the strength of the designation, in the principal sacrifice of *Jyotiṣṭoma*, the distribution of the *dakṣhiṇā* is to be made in the same manner. Otherwise in the variant *Dwādaśāha*, the term *Ardhinaḥ* would not be taken as a repetition of an established one. This is what is (intended to be) said : Without an interpretation which would involve a contra-

- 1 According to the following details viz *ब्रह्मण्यर्चनी* from the *ब्रह्म* group ; *उद्गाता* from the *उद्गाता* group and *यैसावदन* from the *होता* group.
- 2 *जघीम* from the *ब्रह्म* group, *उद्गाता* from the *उद्गाता* group, and *अध्वार्युः* from the *होता* group.
- 3 viz. *होता* from the *ब्रह्म* group, *उद्गाता* from the *उद्गाता* group, and *अध्वार्युः* from the *होता* group.

diction with the designation<sup>1</sup> in the variant<sup>2</sup> in the basic sacrifice, the aforesaid distribution of the *dakṣiṇā* should be made.

Thus ends the chapter on the Law of Partnership.

## Chapter XXIV.

### ON THEFT.

The Author expounds the text of Manu viz. "An offence, which is committed in the presence &c": Anwayawat drawyarakṣhītyādīnā (p. 144. l. 28). Beginning with *In the presence i. e. in the presence of the owner guarding, or the king &c.* (p. 383 l. 13). The Author states the substance of the portion "as also where anything denied after it is committed &c": Yachcha Sānwayamapīti (l. 30). *Where, moreover, when the act is committed in the presence &c.*" (p. 384. l. 1.).

The Author introduces the original text: Tatra taskaragrahaṇeti (p. 145. l. 3) *There as the catching of a thief &c.* (p. 384. l. 8.)

### Yājñavalkya Verse 266.

Apaṅgtabhājanādīnā weti (l. 7.) *the vessel &c. which had been taken away &c.* (p. 384 l. 18). The meaning is, that in his house where it was lost on account of theft &c. if it be found in any one's house or in the hand, by that sign that man should be arrested. Wāsaṅ sthānam yasyāsāwīti (l. 8.) *place of residence, whose it is, that.* That which is resided in is a residence. At each place the word place is to be understood as relating to that place only which has been resided in and not by taking a residence i. e. a place as one word.

### Yājñavalkya Verses 267-268.

In the expression "whose mouth becomes parched up, and voice falters", by the base of the words one whose mouth has become parched up and one whose voice falters only two have been taken; by the termination of *Jas*, however, many have been indicated. Therefore by reason of the mutual contradiction between the base and the termination, the formation of the word would be improper; anticipating this, the Author says: Bahuwachanādīti (l. 18). *By the.....plural number &c.* (l. 16). The import is this: The base (word) is indicative of others (by implication), thereby are included also those whose forehead perspires and the like others. And thus

1 समपदा. See note 1 on p. 383. Mīśakharā.

2 As opposed to वृत्ति the principal or base.

the plural number being ordained only when the plural is intended to be mentioned, there is no contradiction between the base and the termination.

PAGE 102\* Anyahastâtparibhraṣṭamiti (p. 145 l. 24) when it had dropped down from another's hand &c. (p. 385. l. 30). 5  
The meaning is that an investigation should be made whether it had fallen in his house from the hand of another i.e. of the thief, or whether it was placed by others and was found at random while the land was being dug.

### Yājñavalkya Verse 269.

The advice that the soul should be purified by human evidence or by the ordeals, is not proper, since, evidence is applicable in an affirmative assertion and therefore in an answer of a simple denial of a negative character having no form, there is no scope<sup>1</sup> for evidence being adduced; anticipating this, the Author says: Nanu nāhaṃ 15  
chora iti (p. 146. l. 1). Indeed.....I am no thief &c. (p. 386. l. 14)  
The Author concludes by Uchahyate (l. 21). The answer is &c. (l. 16). Mānuṣham punariti (p. 146. l. 2). moreover, although human proof &c. (p. 386. l. 19.).

This is the meaning: Here on account of the answer of the simple denial as to non-existence, although human evidence cannot be adduced in such a place, still in an answer of denial of a mixed with an exception, even human evidence has indeed scope. How? Through the exception which is used as a means of the denial and which is of an affirmative character. This is what is (intended to 25  
be) said: In an answer of a simple denial, only an ordeal, while in a mixed answer even human evidence, becomes possible.

This very thing he expounds by an illustration: Yathā nāsāpa-  
hārakāṭa iti (l. 4). As.....at the time of the loss or theft &c. (p. 386-  
l. 24.). The meaning is, that when one is accused on a suspicion of 30  
theft, if it is established by witnesses that at the time of the loss of the thing he was in another country, the absence of the theft becomes necessarily established, and he is declared absolved.

1 This has a reference to the well-known rule of evidence that when a witness denies that he was at a particular place all further questions which assume his presence there are stopped until the fact that he was there is proved otherwise.

## Yājñavalkya Verse 270.

The Author cites the text of Nārada in support of what has been stated : Sāhaseṣhu ya evokta iti (l. 9.) *which has been ordained-for the Sāhasa* (p. 387 ll. 17-18.) The meaning is that the punishment which has been stated for the Sāhasas i. e. for the three acts called *sāhasa* of the highest, middlemost, and the lowest, that very punishment has also been laid in the order also for three (kinds of) thefts of things fit to be the subjects of the highest and other *sāhasas*. By this this is what has been (intended to be) said : In the case of a theft of the best articles, the punishment for the highest *sāhasa* having been prescribed, and death also being included in the punishment for the highest *sāhasa*, is proper for the theft of the best article. Etachha danḍottarkālamiti (p. 146. l. 18). *This moreover.....after the punishment &c.* (p. 388 l. 10.). 'This' i. e. branding with a dog's foot.

## Yājñavalkya Verse 271.

Tadviṣṭayādhipatiriti (p. 146. l. 26.) *The owner of such property &c.* (p. 388. l. 29) i. e. the ruler of the country. Chauram dhanam cheti (l. 26) *thief and also property &c.* (p. 388. l. 29), i. e. should hand over the thief; and if unable to do that, the property. Athawāśeṣhamiti (l. 27). The words should be split as *āśeṣham* 'in entirety' *Vivite twapahāra iti* (l. 29). *when, however, the theft takes place in a pasture-ground &c.* (p. 389. l. 5). By pasture-ground is to be understood a portion of land where grass and fuel are stored in abundance, and which is enclosed and guarded, as has been stated<sup>1</sup> in the chapter on Disputes between owners of cattle and the herdsmen.

## Yājñavalkya Verse 272.

Vikalpawachanasantu yathā tatpratyāsattiti (p. 147. l. 5) *The optional clause, however, used to indicate that as much as should be done &c.* (p. 389. l. 26). i. e. those villages which are contiguous to the place of the theft, should alone pay and not, moreover, the rule that five villages or ten villages. The meaning is that the optional expression 'or' is with a view to avoid it as an (obligatory) rule. Yadi tasmin dāpya iti (l. 8.). *If while the property is being restored &c.* (p. 390 l. 2). When caught as 'a thief' and while that man is being made to pay

1 See Mitākṣharā text. p. 109. l. 17. transl. &c. 299. ll. 5-6.



the amount, if in regard to 'the stolen property' i.e. as regards the theft a doubt occurs then he should be administered an oath. Or by means of relatives i. e. religious comrades as witnesses, he should establish i. e. remove the suspicion. This is the meaning.

### Yājñavalkya Verse 273.

Indeed, by the text "shall cause to be impaled on stakes, men," a mere mounting on the stakes only is inferred, and not death. For as under the text<sup>1</sup> "should offer to a Śrottriya" the accomplishment of the rule is secured by a touch<sup>2</sup>, similarly here also, the rule is complied with by a mere mounting on the stakes, so having done that only, they should be taken off and should not be executed, so, the Author says : *Ayan cta wadhaprakāra iti* (p. 145. l. 12) *This moreover... rule regarding... corporal punishment &c.* (p. 390 l. 15). By the text<sup>3</sup> of Manu viz. "A fire-house &c." the punishment of death being established for these also, to an inquiry in what manner would (the punishment of) death be inflicted, the answer is that the special method of inflicting the punishment of death by impaling on the stake is being prescribed in this text. This is the meaning.

### Yājñavalkya Verse 274.

**PAGE 103\*** *Tau Yathākramamiti* (p. 147 l. 18). *These two respectively &c.* (p. 390 l. 26). The distinction is that a pick-pocket is to be deprived of the hand, and the cut-purse of the two fore-fingers making up a tongue. *Prathame graba iti* (p. 147 l. 23) *on the first conviction &c.* (p. 391 l. 10). 'First conviction, i. e. first (offence of) theft.

### Yājñavalkya Verse 275.

*Parigrahavinyogeti* (p. 147 l. 25). *The relation or the appropriation &c.* (p. 391 l. 18) e. g. 'for stealing a cow owned by a Brāhmaṇa a greater punishment'. Ownership by a Brāhmaṇa is the cause

1 See Āchārādhyāya Verse 109.

2 V. L. On p. 102. l. 29, read thus . ओषिवावोपकल्पयेदित्यत्र स्वयं न वा विधिकारिः न ह्यन्येन युक्तोपपन्नमिति &c.

3 It appears Subodhini reads Manu IX. 280. cited in Mitāksharā on Verse 273 as अन्धकाराद्युदाहार &c. and not as कोशमाराद्युदाहार &c. as has been done in the Mitāksharā.

of a greater punishment ; similarly, if that cow is used to be milked for the perpetual sacrifice, for stealing such a one even a still higher punishment ; thus, appropriation also is the cause for a greater punishment. Thus it is to be understood that an absence of such a kind of  
5 relation or appropriation will be a cause for a smaller punishment.

By the text of Nārada viz. "which has been ordained.—for the Sāhasas &c", for thefts of inferior, middling, and highest articles, generally the punishments respectively for the first, middling, and highest  
10 Sāhasas have been provided for. The Author expounds in substance the first half of the original text as laying down a special rule: *Mṛṇmayeṣhu maṇimallikādīṣu* (p. 148 l. 5). *In the case of a jewel or a pot which is made of earth &c.* (p. 392 l. 11). Here, 'made of earth' is indicative of an inferior article : 'Other than cow's &c' articles of middling value, and 'belonging to a Brāhmana' of the highest. This is the distinction.  
15

It has been stated that the punishment should be determined in accordance with the price &c. Thus, desiring to point out those expressed by the word *Ādī* 'and others', the Author expounds the latter half of the original text : *Tatra daṇḍakaṭpaṇāyāmīti* (p. 148 l. 3).  
20 *There for fixing upon a punishment &c.* (p. 392 l. 17).

Indeed, it may be asked, in such a case are the place, the time, the age, and the capacity alone the causes for determining punishment ? The answer is, not so ; but there are other causes also which are impliedly indicated by these place &c. so the Author says: *Etachcha jātidrawyeṭi*  
25 (p. 148 l. 9). *This moreover...the caste, the article &c.* (p. 392 l. 20).

The Author points out the mode of (determining) punishment by regard to the caste as also by regard to the qualification &c. *Tathā hī aṣṭāpādīyamīti* (p. 148 l. 9). *Moreover...is eight-fold &c.* (p. 392 l. 23) *Viṣkṣhatrīyabrāhmaṇādīnāmīti* (l. 12) *of the Vaiśya, Kṣatriya or Brāhmaṇa &c.* (p. 392 l. 29). Here the term 'learned' is adjectival  
30 of the *Vaiśya, Kṣatriya* and the rest. By regard to his being a *Śūdra* or a twice-born, as also by regard to the qualifications in the form of learning, the punishment is to be determined. This is (what is meant by) "by regard to caste and quality."  
35

It may be said, by the text<sup>1</sup> "for stealing, an additional punishment &c." *Manu* has prescribed a corporal punishment. And by the term corporal punishment are mentioned acts commencing

with beating and as far as deprivation of life. Are all these to be administered cumulatively? So the Author says, *Hartūrḥiyamāṇeti* (l. 19). *Against the thief-of being deprived &c.* (p. 393 l. 11). The meaning is that by regard to the quality of the thief, as also by regard to the qualities of the owner of the thing, which was being stolen.

*Dwiḥjodhwagaḥ Kṣhīṇawṛtiriti* (p. 149 l. 4). *A twice-born who is travelling and whose provisions are exhausted &c.* (p. 394. ll. 16-17). 'Whose provisions are exhausted' i. e. whose supply of stores on the journey is exhausted. 'Travelling' i. e. in the way, 'a twice born' i. e. one belonging to the twice born caste. The words 'travelling' and 'whose provisions are exhausted' are adjectival of the twice-born.

*Hinakarmaṇīti* (p. 149. l. 6) *who neglects his sacred duties &c.* (p. 394. l. 22). 'One who neglects his sacred duties' i. e. who have reduced' their course of conduct, and not from the higher ones.

### Yājñavalkya Verse 277.

*Śataṃ danḍobhihita iti* (l. 18.). *a fine of a hundred has been mentioned &c. i. e.* in the chapter on *Sāhasa*. *Brahmahatyāūdeśaṃ vakṣhyata iti* (p. 395. l. 19). *for the fetus of a Brāhmaṇa, the Author will mention &c.* (p. 395 l. 21.). i. e. will mention in the *Prāyaschittādhyaṃ*.

*Puruṣasya Striyāschā pramāpana iti* (p. l. 19.). *For the murder of a man or a woman &c.* (p. 395. l. 23). For the murder of a man of good morals and conduct, as also of a woman, the punishment is that which is laid down for the highest *Sāhasa*; while of those without good morals or conduct, only the first *Sāhasa* thus is to be noted the rule of adjustment in the option. For the murder, moreover of men with small morals or good behaviour, by deduction, the punishment comes to be that for the middle *sāhasa*.

### Yājñavalkya Verse 282.

*Kaṭairvirāṇamayairiti* (p. 150 l. 17) i. e. *by the virana grass &c.* (p. 397 l. 25) That grass at the root of which is the fragrant *khus* is

1 Op. another Smṛti cited by Medhātithi p. 836. l. 26.

"हिरास्वदेवको ह्यासुजावे ह्यसुजा । अहमे ह्यसुजा विरिहाद्वि धार्मिकम् ॥"

called *Virāṇa*, vide Amara, "It shall be called *Virāṇa* or *Virātara*, at whose root is the *uṣīra*; it is used in non-feminine (gender)."

Here ends the Chapter on Theft.

5

## Chapter XXV.

### ADULTERY WITH WOMEN.

PAGE 104.\* Paraspāramupāśraya iti (p. 150. l. 24.) *with mutual contact &c.* (p. 398. l. 13.). The meaning is that by

10 embracing, catching the garment, leaning upon the arms and the like acts, having a mutual contact. *Samyak samgrahaṇamiti* (p. 150. l. 24.). *Complete act of adultery &c.* (p. 398. l. 14.) 'Complete' i. e. in all details, i. e. a completed i. e. highest act of adultery.

15 Having stated the threefold division of adultery, the Author introduces the original verse : *Sangrahaṇajñānapūrvakatvāditi* (l. 26.) *As the detection of adultery is necessary &c.* (p. 398. l. 16.).

### Yājñanalkya Verse 283

20 In the expression *kesakṣeṣi*—'holding each other's hairs'—what is the compound? How moreover is the word derived? Anticipating such a question, the Author says : *Tatra tenedamiti sarupe* (p. 141. l. 2.) *Two homogeneous words coming together indicating 'this happens therein or with that &c.'* (p. 399. l. 1-2). By '*Tatra*' is meant that the homo-  
25 geneous word is in the locative case; '*Tena*' that the word is in the instrumental case. '*Idam*' means that a compound is formed (of these) with this sense. The compound is known as the *Bahuvrihi* compound; this is the meaning of this aphorism.

30 If the compound is solved as by catching in the hair of each other, this is begun, under the rule' (of grammar) "The affix *ich* (इच्) comes (after a *Bahuvrihi*) when the compound denotes reciprocity of action". That compound of *Bahuvrihi* which has been laid down by '*Tatra tenedamiti*' in a reciprocity of action, from that, occurs the affix (इच्). This is the meaning of this aphorism under the rule: "(The elongation of the final) is to be found in other words also", the first word is  
35 elongated.

Being at the end of a compound termination, in the crude form under the rule': "and the words *tiṣṭhigu* (i. e. at the time when the

cows stand to be milked) and the like also (are Avyayibhāva compound) being enumerated<sup>1</sup> in the *tiśṭhadgu* group, when (the compound expression) *Kesākeṣi* has the name of *Avyayibhāva* under the rule,<sup>2</sup> "An *Avyayibhāva* compound is also (neuter gender)", and under the rule<sup>3</sup> "A *luk* elision occurs of अर् (Āp) and षर् (Ṣp) after an *Avyaya*" the *luk* elision having occurred in the instrumental case, the word *Kesākeṣi* comes out as the result. This is the meaning. 5

It may be said, indeed, it is not possible to arrest a man as intent upon committing adultery on account of the signs in the form of scars made by nails &c, for that is also possible as the result of anger or insult, so the Author says : *Rāgakṛtairīṅgalirīti* (p. 151 l. 4) *from signs of amorous intercourse &c.* (p. 399 l. 7). *Dwayoḥ sampratīpatyā weti* (l. 5) *or by the admission of both &c.* (l. 9.) i. e. by the admission i. e. confession of the two i. e. of the straying woman as also of the adulterer. 15

*Parastrigrahaṇamiti* (l. 5). *The use of the expression 'another's wife' &c* (p. 399 l. 11) Although in the case of a woman who is under an appointment, as the rule for cotion prescribes the procedure of anointing the body with ghee, and as making scars with nails and the like acts are prohibited, still he should not be arrested on account of that mark as of a mutual admission, as it may also be possible under the procedure of appointment. In the case of kept mistresses, since they are common (property), even by aforesaid signs their arrest is proper. Therefore, the meaning is that those under an appointment and the like are excluded from the word 'another's wife'. This moreover will be made clear at the proper time. 20 25

### Yājñawalkya Verse 234.

*Yastwanākṣhārīti itī* (l. 12) *That man however not before accused &c.* (p. 399 l. 28). "before accused" not accused i. e. not censured "as he is a paramour." 30

*Pratishiddhayoḥ stripuruṣhayoḥ* (l. 18) *a man and a woman... prohibited &c.* (p. 400 l. 10) i. e. of the straying woman and her para-

1 The words enumerated in this group known as the *tiśṭhadgu* are all irregularly formed *Avyayibhāva* compounds such as तिष्ठ, अर्ध, अव्ययीक्य &c.—इवाक्ये

2 Pāṇini II 4-18

3 Pāṇini II 4 82

4 i. e. the feminine termination.

5 i. e. the nasal affix.

6 i. e. an indeclinable

mour who had been prohibited thus 'you must not speak with this man', 'you must not speak with this woman'. This is the meaning.

### Yājñavalkya Verse 285.

- 5 Nālisha chāraṇadāreṣhwitī (l. 24). *This rule does not...to wives of chāraṇas &c.* (p. 400 l. 26). 'Chāraṇas' i. e. the actors and the like. The import is, those who live by their wives, i. e. whose livelihood is by the proselytisation of their wives. Since they prepare their women for other men, and concealing themselves, cause them to have  
10 sexual intercourse. This is the meaning.

### Yājñavalkya Verse 286.

- Two points have been stated before viz. "When, moreover, he has intercourse with a woman of his own *varṇa* who was not under<sup>1</sup> (any one's) protection, or with a woman of a lower *varṇa* under-protection. There the Author mentions the penalty for intercourse  
15 with a woman of the same *varṇa* under protection: *Sahasraṃ Brāhmaṇo danḍya iti* (l. 31) *A Brahmana shall be fined a thousand &c.* (p. 401. l. 14.).

- The meaning of this: Here the first half refers to the same subject as in Yājñavalkya in the text viz. "In the case of one of the same class, the higher amercement". Here *Brāhmaṇa* is indicative, by implication, of a *Kṣatriya* and the like also; so the term  
20 *Viprā* also. Therefore in the case of *Kṣatriya* and the rest also, for having intercourse with a woman of the same class and under protection, the same rule should be understood (to apply).  
25

- This first half, moreover, has been cited by the Author of the commentaries for an exhaustive<sup>2</sup> treatment of the topic. It is only the latter half that is useful for the point under consideration. In  
30 the first half the expression is "under protection," while here a contrary meaning is intended, as the term "not under protection," is deducible<sup>3</sup> from the sense. Moreover also for having intercourse

1. गत This corresponds to the concubine under concubinatus of the Roman Law. See the remarks of their Lordships in Nagubai's case 53 I.A. 153 at pp. 156-160

2. सम्बन्धितः i. e. all the points arising under the topic may be touched.

3. i. e. as opposed to व्यक्त or अव्यक्त expressed.

with one not under protection, but willing, and of the same *varṇa*, he shall be punished with a fine of five hundred *paṇas*.

The Author mentions the penalty for an intercourse with one in the descending order but under protection : *Sahasraṃ Brāhmaṇo daṇḍam dāpya iti* (p. 152. l. 1.) *A Brāhmaṇa shall be compelled to pay a fine of one thousand &c.* (p. 401. l. 18.). The meaning of this : The *Kṣatriyā* and the *Vaiśyā* are under consideration ; therefore for resorting *i. e.* going with a *Kṣatriyā* or a *Vaiśyā* woman under protection, a *Brāhmaṇa* should be compelled to pay a fine of a thousand *paṇas*. For a *Kṣatriya* or a *Vaiśya* having intercourse with a *Śūdrā* woman under protection, the fine shall be one thousand. By a parity of reasoning, for a *Kṣatriya* going with a *Vaiśya* woman under protection the fine also comes to be declared to be one thousand. 5 10

The Author expounds the second half of the original text : *Pratilomya utkr̥ṣṭaśṭrīgamana ityādinā* (p. 152. l. 7.) *In the case of a Pratiloma offence i. e. intercourse with a woman of the higher class &c.* (p. 402 l. 3). *Ubhāwapi tāweweti* (l. 8). *But even these two &c.* (p. 402 l. 7.) These two also *i. e.* the *Kṣatriya* and the *Vaiśya* for having had intercourse with a *Brāhmaṇī* woman under protection shall be punished as *Śūdras*. Under the rule stated in the text<sup>1</sup> "Loses all his property ; if guarded, everything", they should be deprived of everything *i. e.* of the body as well as the property ; *i. e.* the import is that after depriving them of everything they should be executed." Or be burnt in a fire of dried grass " is a special method of execution. The procedure of burning in a fire of dried grass, has, moreover been described in the Chapter on Theft. 15 20 25

This, moreover, has a reference to a virtuous *Brāhmaṇī* woman, the wife of a very learned *Brāhmaṇa*, because of the heaviness of the penalty, as also from the rule of punishment elsewhere propounded viz. "a *Vaiśya* shall be punished with the deprivation of all his possessions, a *Kṣatriya* a thousand". 30

It has been stated before that this has a reference to a woman under protection. Having stated the concurrence of *Manu* there, the Author cites a text of *Manu* for another point also : *Brāhmaṇim yadyaguptāmiti* (p. 152. l. 9.) *If...with an unguarded Brahmani &c.* (p. 402. l. 9.). For a *Kṣatriya* going with a *Brāhmaṇī* woman not under protection, a fine of a thousand shall be 35

the penalty. The meaning is that the penalty for a *Kṣatriya* is greater than that for a *Vaiśya* as he is appointed<sup>1</sup> for the protection (of people). *Śūdro guptāmaguptān weti* (l. 12.). A *śūdra*, whether guarded or not guarded &c. (p. 402 l. 17.) If a *śūdra* goes with a twice-born woman whether under the protection of a husband &c. or not under protection, then the penalty presently to be mentioned should be understood.

The Author points out that very penalty in detail : *Aguptaikāṅgasarvasweti* (p. 152 l. 12). *If unguarded, he loses the organ and all his property &c.* (p. 402 ll. 17-18). By going with one not under protection—loses an organ and entire property—one for whom the punishment is the deprivation—of one organ and of the entire property—is known as one with a loss of one organ and everything. The import is that after lopping off the organ he should be punished with the (deprivation of his) entire property. If guarded i. e. when under protection. Going with her he is deprived of everything, as also of his body. The meaning of this is that after depriving him of his entire property, he should be executed.

The Author expounds the portion “the lopping off of the ear and the like of a woman” *Nāryāḥ punariti* (p. 152 l. 13) *of a woman however &c.* (p. 402 l. 19). From the statement of the rule as to the lopping off of the ear and other organs of a woman having intercourse with men of the lower order, excepting where the intercourse is with a man of the lower order, the guilt is of a smaller character, as appears to be a reasonable inference from the absence of the (punishment of) lopping off of the organ.

For an intercourse with one of a lower order, a monetary penalty appropriate according to the possession or non-possession of good qualities, while for an intercourse with a woman of the same *varṇa*, a verbal punishment by the expression “*he*, and the like”, and thus a punishment should be administered in accordance with the (usage of the) country &c. Intending this, the Author says, *Ānulomyena weti* (l. 13) *with one of a lower tribe &c.* (p. 402 l. 19).

1 The offence becomes aggravated as being committed by one against the breach of his own duty—it being the function of a *Kṣatriya* to offer protection to all

2 Here is a mistake in the reading in the *Subodhini* as will be seen by a reference to the text of *Manu* Chapter VIII. 374, the correct reading अग्रमदसस्त्रैर्द्वयं चरेत् &c.



**Kṣhatrīyavaiśyayoranyonyaśtriabhiḡamana iti** (l. 20) *In the case of a Kṣhatrīya or a Vaiśya, each having intercourse with a woman of the other class &c.* (p. 403 ll. 4-5). Here cumulation is not intended, each one being the cause of the guilt. Here also 'intercourse with one guarded' should be understood.

5

**Vaiśyaśchet Kṣhatrīyāmīti** (l. 21) *If a Vaiśya...a female of the Kṣhatrīya caste &c.* (p. 403 l. 7) i. e. the penalty which has been laid down<sup>1</sup> for an intercourse with a *Brāhmaṇī* not under protection viz. "Let him fine the *Vaiśya* five hundred, but the *Kṣhatrīya* one thousand" they both deserve that penalty in order. Although *Kṣhatrīya* is higher as compared with a *Vaiśya* it should be noticed that a higher penalty is laid down for him as he is entrusted with the duty of protecting (the people).

10

### Yājñavalkya Verse 287.

15

PAGE 106\* **Tadanabhimukhīmīti** (p. 152. l. 26.) *not approach- ing it &c.* (p. 403, l. 21.) i. e. not, approaching a marriage.

### Yājñavalkya Verse 288.

20

**Aviśahya tu yaḥ Kanyāmīti** (p. 153 l. 3). *But if one forcibly—a maiden &c.* the meaning of this is that he who violently i. e. by force &c. deflowers a maiden by striking his finger in the secret part, his two fingers should be lopped off, and he also deserves a fine of six hundred.

25

**Sānurāgām pūpavaddūṣhayatīti** (p. 153 l. 4.). *Similarly defiles as before, one having a sexual desire &c.* (p. 404. l. 22.), i. e. defiles by de-flowering her by striking a finger &c.

The Author expounds the portion "And for (doing) similar acts towards one of a higher class, death": **Yadā punarukṛtśṣajātīyāmīti** (l. 11). *When, however, with the higher tribe &c.* (p. 405 l. 3).

30

### Yājñavalkya Verse 289.

35

**Sansṛṣhṭamāsthūnatwādīti** (p. 153. l. 21). *of having had mixed intercourse &c.* (p. 405. l. 28). She by whom intercourse was *sansṛ- ṣhṭam* i. e. obtained, is one word, being implied in the compound.

## Yājñavalkya Verse 290.

Uktalakṣhaṇavarṇastriyo dāsya itī (p. 153 l. 27), *The women of the varṇas already described are (considered as) slaves &c.* (p. 406 l. 13) i.e. described in the chapter on Breach of Contract of Service by the text<sup>1</sup> "one born in his (master's) house, one purchased &c.

Swairiṇī Brāhmaṇī<sup>2</sup> (p. 153 l. 32). *A Wanton woman a Brāhmaṇī &c.* (p. 406 l. 25). One who is wanton and is a *Brāhmaṇī*. The word *Brāhmaṇī* is only indicative. Therefore wanton women of the *kṣatriya* and others also are included. Similarly, a prostitute, as well as a female slave, as also one not restrained by her master (*nishkḍ-sinī*)—thus it is to be understood.

Dāsyascha tāwadwarṇastriya eweti (p. 154. l. 4.) *Even female slaves, are after all women of the varṇas &c.* (407. ll. 5-6.). Here the word *Varṇa* is used as including only an extension of the *jātis* in the lower order. Therefore it should be noted that the slavery exists in the *anuloma jātis* such as the *mūrdhavaṣikta* and others.

It may be said, indeed, let the wanton women and the like be women of the *varṇas*, still how can they not be common women? Anticipating such a question and propounding an answer that having regard to the rule restricting them to their own men and forbidding them from other men, there is an absence of the commonness, so the Author says: *Na cha varṇastriṇāmityādinā* (p. 154 l. 6). Beginning with *And in the case of women having a varṇa &c.* (p. 407. l. 9.) i. e. of one guarded in that manner, in short not defiled.

It may be said, indeed, as on account of an impurity of death, there is an absence of the capacity for performing one's religious acts such as the *sandhyā* &c. so on account of the status of a female slave, there would be deflection from the rule regarding restriction to one's own man, then in that case let there be commonness as regards all men. Anticipating this objection the Author meets it: *Na cha dāsibhāwādīti* (l. 11.) *nor, moreover.....on account of a condition of slavery &c.* (p. 407. l. 23.).

This is the import: In the case of an impurity on account of death and the like, the absence of the capacity is on account of a special text, and not on account of an initial character. Here there

1 Narada V. 26. See Mīṭākṣharā p. 322. l. 1

2 Subodhini reads as has been given in the Text. The passage in Nārada reads  
स्वैरिण्यब्राह्मणी &c.

is neither a text, nor on account of its initial character. Since by slavery is understood to be dependence, as in the case of pupils &c. Therefore there is no renunciation of one's own duty, so that there could be commonness.

It may be said again, indeed, let there not be unapproachability in the case of a wanton woman or a female slave by reason of an absence of commonness, but in the case of a prostitute as there is commonness, let there be approachability: Anticipating this, the question is, if you say so, then say whether this *Vetīyā* is approachable by reason of her falling within *jātis* other than the *varṇas* such as the *Brāhmaṇa* and the rest, and the *anuloma jātis* such as the *mūrdhavasikṭa* and others, or by reason of her falling within the *varṇas* or the *anuloma jātis*? or by reason of her falling within the *pratiloma jātis*? The Author states these doubts with a view to refute: *Nāpi veśyēti* (l. 12.). Nor even a prostitute &c. (p. 402. l. 25.). The Author refutes the first: *Varṇānulomajeti* (l. 12.) as have sprung from the lower order &c. (l. 26). The meaning is that a separate *jāti* like that being non-existent, approachability by reason of her being within it would not be.

Nor the second, so the Author says: *Tadantaḥpātītweti* (p. 154. l. 13.) If she falls within these &c. (l. 27.). The meaning is that by reason of their falling within the *varṇas*, by reason of the rule that they should devote themselves entirely to their husbands, like the *swairinī* or *dāsī* as stated before, there would be no approachability.

Nor also the third, so the Author says *Pratilomajātītweti* (l. 13) sprung from a *pratiloma* union &c. (p. 407 l. 2). The meaning is that as the issue of a *Pratiloma* union are tainted, intercourse with them is prohibited.

PAGE 107\* Moreover, the prohibition of an intercourse with another man extends to all women whether born of the *varṇas* or of the *anuloma* or *pratiloma* connection, and degradation being the result of doing the prohibited act, and association with one degraded being prohibited, the *swairinī* and the like are not fit to be approached by a stranger—thus by way of summing up the statement of the objection the Author says: *Ataḥ parapuruṣhāntarabhoḡa* III (p. 154 l. 14). Therefore coupling with another man &c. (p. 408 l. 1).

The Author answers *Satyam evamityādīnā* (l. 15). Beginning with this is true &c. (l. 5). This is the import: An offence

is of two sorts ; (with results) visible and invisible, There one (with) visible (results) would be where there is a fear of being chastised by a guardian or father &c., as also the fear of a punishment from the King. In the absence of a father as also in the absence of these, as in the case of others' wives with these two characteristics of lapses, there is an absence of approachableness, one in that manner does not exist in the case of the *swairinī* and the like, and hence the statement generally as to their approachableness.

Well, let there be a statement as to their approachableness. How is it that there is an absence of a punishment for approaching them ? So the Author answers : *Daṇḍābhāvaścheti* ( l. 12. ) and again..... an absence of punishment &c. ( p. 408. ll. 12-13 ). This is the import : In the text " In (the case of) women who are protected slaves a punishment has been laid down for an intercourse, with another man, of women restricted to one man each, it comes to be stated that resort to a man other than the one (to whom she is ) restricted is the cause of the infliction of a fine. Therefore, wherever there is no cause there is no punishment ; this is quite evident ; and so owing to the absence of such a cause, there is an absence of a punishment for an intercourse with a *swairinī* and the like others. This is the meaning,

It may again be said, let there be no punishment for a man going with a *swairinī* and the like, but let there be a punishment at least for the *swairinī* and like other women having the enjoyment, so the Author says : *Swairiṇyādānāmitti* ( p. 154. l. 17 ). and again in the case of wanton women &c. ( p. 408 l. 13 ).

Here also, the Author states another reason : *Kanyāṃ bhajan-timitti* ( l. 18. ) *A maiden who approaches* &c. ( p. 408. l. 5. ). This is the meaning : A maiden approaching a man of the highest tribe should not be made to pay any thing. Thus, a prohibition of a fine for a maiden is the principle<sup>1</sup> ; and from the appearance of a principle like this there must be an absence of punishment for a *swairinī* and the like. This is what is (intended to be) said : The existence of a principle is only a reason and not an invariable cause. A maiden is also a woman, so also are the *swairinī* and like others. Therefore both being generally women, that there should be an absence of punishment for the *swairinī* and the like others just as is with a maiden, is only a reason, and not the principal reason for an absence of a penalty for them.

1 184 l. e. the ratio of the rule.

If thus there is an absence of a punishment, then there must not also be a penance, so the Author says : *Prāyaschittantwiti* (l. 19.) *An expiation, however, &c.* (p. 408. l. 17.).

It has been stated by some writers that the *Veśyas* are within the *varṇas*. With a view to state his own opinion beginning with a condemnation of the same, the Author comments on it : *Yatpunarveśyā-nāmiti* (l. 21.) *As for...prostitutes &c.* (p. 408. l. 20.) The syllogism should thus be formed : the *Veśyas* are fit to be regarded as falling within the *varṇas*. In the absence of being other than the *pratiloma jāti*, being included in the human *jāti* wherever the aforesaid cause exists, there also is an inclusion among the *varṇas*. As is the case with *Brāhmaṇa* and others. The Author exposes the conclusion by pointing out the variableness in the cause: *Tatretyādīnā* (l. 22. *There &c.* (p. 409. l. 2.). In the *Āchārādhyāya* the *Kuṇḍa*, *Gośaka* and others have been stated as not falling within the *varṇas* &c. Thus, although here a stated reason exists, the conclusion does not. This is the meaning.

Now the Author states his own view. *Ato veśyākhyeti* (l. 23. *Therefore—known as the veśyā &c.* (p. 409. l. 4.). The Author mentions that very *jāti* : *Utkṛṣṭajāteriti* (l. 23.) *of a superior one &c.* (p. 409 l. 7) The meaning is : that is a caste which not having sprung from any prohibited man maintains itself by intercourse with males. *Panchamī jātiriti* (l. 26.) *a fifth caste &c.* (p. 410. l. 2.). The meaning is that by regard to the *Brāhmaṇa* and others the *veśyā jāti* is the fifth.

*Paśuveśyābhigamana iti* (p. 155. l. 2.). *for having intercourse with brutes or prostitutes &c.* (p. 410 l. 9.) i. e. for an intercourse with brutes, as also for an intercourse with prostitutes.

### Yājñavalkya Verse 291.

*Vaḍavā smṛteti* (p. 155. l. 12.) *a female slave...known &c.* (p. 411. l. 10.) *Vaḍavā* is a household maid.

### Yājñavalkya Verse 292.

*Ākrameṇa cha sangachhannīti* (l. 10.). *Or who had forcible connection &c.* (p. 411. l. 29.) The meaning is that although she was unwilling, still forcibly causing scars with teeth, nail and the like, and having by force an intercourse. *Bahubhīrwāpi wāsayediti* (l. 20.) *or cause to be approached by many &c.* (p. 411. l. 31.) The meaning is that he

who without paying a fee, or paying only one fee, causes her to have intercourse with many.

### Yājñavalkya Verse 293.

5

PAGE 108\*. Pauruṣham wābhinukho mehatīti (p. 156. l. 3.) or *discharges the urine in the mouth of a male &c.* (p. 412. l. 6.)

The expression 'of a male' is connected with either clauses like the rule<sup>1</sup> in crow's eye; and therefore the connection of words is, "or discharges the urine etc. in the mouth of a male", or, "discharges i. e. passes urine etc. in front of a man".

10

It may be said, indeed, here the penalty laid down for an intercourse with a female ascetic is twenty-four paṇas, while Nārada<sup>2</sup> commencing with the passage "The queen, a female ascetic &c." and ending with "When a man casually knows any one out of these women he is said to have committed the offence of violating the bed of a preceptor. For such a crime, no other punishment is ordained than the excision of the organ" has ordained the punishment of the lopping off of the organ, so there is a mutual contradiction. The answer is, it is not so. The text of Nārada is in reference to a highly qualified ascetic lady, or even there, for a habitual offence, while the text of the Lord of the Yogis has a reference to cases other than this, so there is nothing here.

15

20

### Yājñavalkya Verse 294.

25

Danḍanameveti (p. 156. l. 9.) *Fine alone &c.* (p. 412. l. 21.) i. e. not branding.

Thus ends the chapter on Adultery with Women.

30

Wiwāhādividhiḥ strīṇāmīti (p. 156. l. 13.) *Legal rules for women ...regarding marriage &c.* (p. 402. ll. 29-30.) The order of words is that a chapter of law in which the legal rules of procedure at the marriage

1 ककशाक्षिणोलकन्याय, the maxim of the crow's eyeball. It owes its origin to a supposition that the crow has one eye-ball and that it can move it to both sockets. It is applied to a word or a clause that may be applied to more than one object or purpose though the clause occurs only once.

2 Ch. XII. 74-76. See Mīṭākṣharā text p. 153. ll. 5-6. Translation p. 401 ll. 26-30 and 402 ll. 1-2.

etc. of the women and men is stated, that title of Law is called "the Mutual Relations of Women and Men".

This is what is (intended to be) said : Where, in a marriage, a transgression occurs by the women or the men. It is thus : the maiden intends to marry one, and the man while being married does not want her on account of suspicions about defects (in her). Similarly a man desires to marry a certain maiden, but the maiden does not, on account of suspicions about defects (in him) or the like. In such a state of things, litigation is set in motion. 5

Moreover in the expression "marriage &c." by the term "*Adi*"-et cetera'-(is indicated that) on a transgression of the rules viz. "a woman must by all means be protected by a man" "a woman also must abide by her husband", a litigation takes place. All this is (comprehended under) the title of Law called the Mutual Relationship of Women and Men. 10 15

## Chapter XXV.

### MISCELLANEOUS.

Tatkarmakaraṇaṃ tathetyādi (p. 156. l. 22.) as also obedience towards his injunctions &c. (p. 413. l. 19.). 'Obedience towards his injunction' i. e. doing (according to) the commands of the king. Punaḥ pradānaṃ (l. 23.) giving back again &c. i. e. returning for acts done. In the reading "grants of towns by the king &c" (the meaning is) a grant for the protection of ports, towns, thickets, and other places. Sambhedaḥ prakṛtinām (l. 23.) divisions of the constituent elements of a state i. e. bringing them together. Or the "divisions among the people" i. e. the internal difference which exists mutually among the people. Pratigrahavilopḥ (l. 24.) abstraction of gifts &c. (p. 413. l. 23.). Of a gift an abstraction i. e. retraction e. g. to a *Brāhmaṇa* who is fit for a donation and who is worthy, not making a gift. Or when intent on making a donation to a *sūdra*, not fit to be a donee, a destruction of the gift. Aśramaṇām (l. 24) anchorites i. e. of the celebrities and others. Kopaḥ (l. 24) wrath i. e. ebullitions, outbursts, in short, swerving from their own duties. Or, of the anchorites mutual conflict i. e. quarrel. Na dṛṣṭaṃ yachcha pūrveṣhu (l. 25) whatever has not been noticed in the preceding titles &c. (p. 413 l. 25). The meaning is what. 20 25 30 35

ever title has not been noted in the aforesaid i.e. in the Chapters on the Payment of debts and the like. The import is that of Disputes thus enumerated, where a decision is made, that is known as a Miscellaneous title. *Evam cha wadatā yo nṛpāśraya iti* (l. 29) *By saying this...that* 5 *...wherein the king is a party &c.* (p. 414 ll. 1-3). The meaning is, a dispute which is exclusively to be determined by the king.

### Yājñavalkya Verse 295.

Now the Author introduces the original text, *Tatrāparādhaviśe-* 10 *ṣheṇeti* (p. 157 l. 1). *There for a particular offence &c.* (p. 414 ll. 4-5).

### Yājñavalkya Verse 296.

*Dandatāratamyamūhaniyamiti* (l. 12) *a greater or less punishment* 15 *should be determined &c.* (p. 415 l. 4). The meaning is that by regard to the force of the rules of expiation, having ascertained the greater or less degree of the offence, the penalty should be determined after taking into consideration the possession of high qualities or their non-possession by (persons of) the *Brāhmana* and other *varnas*.

### Yājñavalkya Verse 297.

PAGE 109\* The Author states the meaning of the word '*cha*' and 25 in the expression "also one who sells unclean meat". *Chasābīdāt kūṭeti* (p. 157 l. 16). *By the use of the word cha—'also'... imitations &c.* (p. 415 l. 17)

The Author states the meaning of the word *cha* 'also' in the expression "and also be compelled to pay the highest amercement". *Chasā-* 30 *bdādaneti* (l. 17). *By the use of the word cha 'also' organ &c.* (p. 415 ll. 16-19). This is the meaning: Even the organ should be lopped off, and should also be compelled to pay as a fine the highest amercement.

### Yājñavalkya Verse 298.

*Pāṣhāṇotkṣhapaṇena bāhunceti* (l. 23) *By throwing...a stone, by* 35 *means of the arms &c.* (p. 415 ll. 31-32). The meaning is that by the arm as the agent, by the act of throwing a stone, that offence which has been committed. *Pāṣhāṇotkṣhepakeṇeti* i.e. "that which threw the stone" is also another reading. This is what is (intended to be) said: If while raising a stick by his hand and throwing it, if through mistake an injury



to a limb of any one about is caused, then he does not become responsible for it.

*Chhedane chaiva yantrāṇāmīti* (p. 158 l. 2) *when the leather thongs are broken &c.* (p. 416 l. 22). 'Of the leather thongs' i. e. of the leather ties, yoking i. e. the pair i. e. the pole which is tied to the neck of a bull &c ; 'ropes' i. e. the halters ; the breaking of these. *Apāhīti* (l. 3). *Away &c.* (p. 416 l. 23). The meaning is that in such a case there is no punishment for the owner.

### Yājñavalkya Verse 305.

The Author removes the charge of tautology in the text<sup>1</sup> "Wrongly decided" on account of the text<sup>2</sup> "Councillors acting in departure from the rules of the *smṛtis* and doing similar acts out of passion, avarice, or fear, should each be separately punished with a fine double (in amount of the fine for) the dispute". *Aprāptaletṛdanḍavidhiparatwādīti* (p. 159 l. 21) *there is no rule of punishment for the wrongful winner &c.* (p. 420 ll. 9-10). He who was successful in the former litigation, if he is found to be an offender on a review, then that successful litigant, by reason of the defeat, is liable to a punishment, and so a rule for a punishment for a winner is being laid down by the clause "wrongly decided". As it has been reached by another text, regarding other portion it is only a reiteration of what has been said, and so there is no repetition.

It has been stated that the councillors together with the king should be punished. The Author cites a text for it : *Pādo gachhatīti* (l. 25) *One quarter goes &c.* (p. 420 l. 15). The meaning is that by reason of the force of the text making the offender, and even all, responsible for the offence, they should be punished as offenders.

It may be said, for only one act the responsibility of the actors for the guilt is by portions, the punishment for these also shall be one only, and not severally for each, so the Author says : *Etachcha pratyekamīti* (l. 16). *This moreover...to each severally &c.* (p. 420 ll. 18-20). The meaning is that this text is intended to indicate that this text merely demonstrates the guilt and is not intended for demonstrating the responsibility of each in portions. There the Author states the reason *Kartṛsamavāyīti* (l. 27) *to the actor alone &c.* (p. 420 l. 23). This is the meaning: under the rule<sup>3</sup> in the maxim, "The merit prescribed in the *Sāstras* goes to him who employs", he whoever is the offender, in him

1 Yājñ II. 305.

2 Yājñ. II. 4.

3 This is from Jaimini III. 7-18 which see.

will the merit go. That merit is two-fold. Belonging to this world, and to the other world. Of this world is punishment and the rest laidd own in the science of law. Of the next world, however, is hell and the like. In this state of things, the text commencing with 'passion and avarice' and ending with "the councillors shall each be severally punished with a fine double that in dispute" laying down the entire responsibility for each man severally in the form of punishment, and of an illegal act also the nature being to generate the merit at the very place where it has sprung in the offender, by a reasoning which is not contrary to the production of an entire result for each, the connection of the unseen result of the merit is with each severally.

### Yājñavalkya Verse 306.

PAGE 110\* The Author states the meaning of 'decided' (*Tiritam*) in the text of Nārada : *Tiritamtyâdinâ Anuddhṛtadanda-mityantena* (p. 160 l. 12). Beginning with *decided &c.* (p. 36) and ending with *where the fine was not pronounced &c.* (p. 421 ll. 13-16).  
The Author states the meaning of the expression 'punishment declared' *Anūṣiṣṭamityâdinâ yâwadityantena* (ll. 2-3). Beginning with *Where the punishment has been declared &c.* and ending with *to the stage &c.* (p. 421).

It may be said, indeed, in the text of Nārada viz. "Decided &c." it is being demonstrated that in a decided suit the fine together with imprisonment should be made, while contrary to this is in the text of Manu. Therefore there is mutual contradiction. Anticipating this, the Author refutes it : *Yatpunarmanuwachanamityâdinâ* (l. 3) beginning with *Again as for the text of Manu &c.* (p. 421 l. 19).

This is the import : It having once been determined that a litigation has been decided according to law, it has been stated that that suit must not again be re-opened ; and not that when there is a doubt whether it has been decided in accordance with law or not, it should not be re-opened. This is what is (intended to be) said : The text of Nārada has a reference to a doubt, the text of Manu has reference to certainty.

Here ends the Miscellaneous Chapter.

The total work is 3604.

"Whose mother was by name Ambikā resplendent with the fame of a holy life, whose father was Pedibhaṭṭa of pure and holy conduct, and who was as if another image of *Sākalya*, that *Srī Bhaṭṭa Viśveśwara* the ornamental jewel of the family of the *Kāuśikas* is always vigilant and ready for expounding the import of the good utterances of *Viṣṇāneswara*."

5

"Whatever may have been here not said or stated, badly may the great and learned<sup>1</sup> men make it into a good composition since their invariable<sup>2</sup> nature is to confer obligation. For the moon with its cold rays, a resplendent lamp, and clusters of jewels in the firmament while extirpating pitch darkness hold the light for the purpose of the people; what motive is there?"

10

Thus ends the Second Book

Called The Book of Positive Law

15

In the commentary by name Subodhini

On the gloss called *Mitāksharā*

Composed by *Bhaṭṭa Viśveśwara*

The son of *śrī Pedibhaṭṭa* the wise great pandit.

1 संस्कारवन्तो विदे अमर II. 7, 5. "तद्वशात् पश्यतः कश्चि."

2 i. e. it is their nature itself which induces them to be serviceable and confer obligations upon others. No special reason is necessary.

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